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Wednesday
September 28, 1983

Selected Subjects

Administrative Practice and Procedures
Nuclear Regulatory Commission

Air Rates and Fares
Civil Aeronautics Board

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Civil Defense
Federal Emergency Management Agency

Color Additives
Food and Drug Administration

Cotton
Agricultural Marketing Service

Crime Insurance
Federal Emergency Management Agency

Endangered and Threatened Wildlife
Fish and Wildlife Service
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Food Additives
Food and Drug Administration

Grains
Federal Grain Inspection Service

CONTINUED INSIDE

Selected Subjects

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Land Sales
Federal Housing Commissioner—Office of Assistant Secretary for Housing

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Pesticides and Pests
Envirormental Protection Agency

Radiation Protection
Federal Emergency Management Agency

Reporting and Recordkeeping Requirements
Nuclear Regulatory Commission
Securities and Exchange Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 48, No. 189
Wednesday, September 28, 1983

ACTION
NOTICES
44238 Agency information collection activities under OMB review (2 documents)

Agricultural Marketing Service
RULES
44163 Cotton and cottonseed; revision of fees
Milk marketing orders:
44170 Eastern Ohio-Western Pennsylvania; correction
44170 Southwest Plains; correction
44165 Sweetpotatoes, canned; grade standards; correction

Agriculture Department
See also Agricultural Marketing Service; Cooperative State Research Service; Federal Grain Inspection Service; Soil Conservation Service.
NOTICES
44238 Agency information collection activities under OMB review
Import quotas and fees:
44239 Meat import limitations; quarterly determinations
44239 Sugar
Meetings:
44240 President's Task Force on Food Assistance

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
44242 Procurement list, 1983; additions and deletions; correction

Civil Aeronautics Board
PROPOSED RULES
Tariffs:
44220 Fares or rates outside zones of flexibility; requirement for submission of supporting data by U.S. and foreign air carriers; termination
NOTICES
Hearings, etc.:
44241 Lockheed Aircraft Service Company
44241 Midway (Southwest) Airway Co.
44309 Meetings; Sunshine Act

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration.
NOTICES
Senior Executive Service:
44241 Performance Review Board; membership

Cooperative State Research Service
NOTICES
Meetings:
44240 Animal Health Science Research Advisory Board

Education Department
NOTICES
Grants; availability, etc.:
44243 Discretionary grant programs; request for field readers
Meetings:
44242 Dependents' Education Advisory Council

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
Environmental statements; availability, etc.:
44244 Savannah River Plant, S.C.

Environmental Protection Agency
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
44204 Captan
44205 Phosphine residues
NOTICES
Motor vehicle fuel economy, evaluation of retrofit devices:
44268 Optimizer device
Pesticide, food, and feed additive petitions:
44266 BASF Wyandotte Corp. et al.
Pesticide programs:
44268 Confidential information and data transfer to contractors
Pesticides; temporary tolerances:
44267 Iprodione

Federal Acquisition Regulation Project Office
RULES
44215 Federal Acquisition Regulation (FAR); ordering procedure for Federal agencies; extension of time

Federal Aviation Administration
PROPOSED RULES
44219 Federal airways; green, red, and blue

Federal Emergency Management Agency
RULES
44208 Federal crime insurance program; ineligible States
Flood insurance; communities eligible for sale:
44206 Maine et al.
Preparedness:
44208 Civil defense-State and local emergency management assistance program
44332 Radiological emergency plans; State and local review and approval; establishment policy and procedure

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
44246 Arkansas Louisiana Gas Co.
44247 Boston Edison Co.
44247 Equitable Gas Co.
44247 Iowa Southern Utilities Co.
44248 Kentucky Utilities Co.
44250 Lockhart Power Co.
44251 Minnesota Power & Light Co.
44251 National Fuel Gas Supply Corp.
44251 Natural Gas Pipeline Co. of America
44252 New England Power Co.
44255 Northern Indiana Public Service Co.
44255 Northern Natural Gas Co. et al.
44255, 44256 Northwest Pipeline Corp. (2 documents)

44256 Pennsylvania Power & Light Co.
44256 Producer's Gas Co.
44257 Seminole Electric Cooperative, Inc., et al.
44260 Transcontinental Gas Pipe Line Corp.
44260 Trans Mountain Construction Co. et al.
44261 Union Electric Co.
44262 Wisconsin Public Service Corp. et al.
44266 Zenith Natural Gas Co.
Natural Gas Policy Act:
44426–44434 Jurisdictional agency determinations (3 documents)
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
44266 Drake, James A., et al.

Federal Grain Inspection Service
RULES
Grain standards:
44168 Sorghum; white-sorghum definition and pericarps description
44165 Wheat, corn, barley, rye, sorghum, flaxseed, and triticale; odor, basis of determination

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
44307 Lansing, Mich.; intent to prepare

Federal Home Loan Bank Board
RULES
Federal associations and savings banks:
44174 Charters and bylaws

Federal Housing Commissioner—Office of Assistant Secretary for Housing
PROPOSED RULES
44412 Interstate land sales; exemption guidelines
44406 Interstate land sales; registration amendments

Federal Maritime Commission
NOTICES
44269 Agreements filed, etc. (2 documents)

Federal Railroad Administration
NOTICES
44402 Washington Union Station, developer selection; criteria and procedures

Federal Reserve System
NOTICES
Applications:
44270 Nabanco, Inc., et al.
44269 South Trust Corp., et al.
Bank holding companies; proposed de novo nonbank activities:
44270 Northeastern Bancorp, Inc., et al.
44269 United Bancorporation Alaska, Inc.; correction

Federal Trade Commission
RULES
Prohibited trade practices:
44194 RSR Corp.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
44237 Sea turtles; transshipment of green sea turtle products through Miami, Fla.; comment period reopened
NOTICES
44278 Endangered and threatened species permit applications
44278 Marine mammal permit applications

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
44203 Febantel-trichlorfon paste
44204 Monensin
Color additives:
44202 Contact lenses coloring; correction
Food additives:
44203 Adhesive coatings and components; 2,4,7,9-tetramethyl-5-decyn-4,7-diol
NOTICES
Animal drugs, feeds, and related products:
44271 Sulfapyridine and sulfathiazole solution; approval withdrawn
Meetings:
44271 Health professional organizations

General Services Administration
See Federal Acquisition Regulation Project Office.

Health and Human Services Department
See Food and Drug Administration; Human Development Services Office.

Housing and Urban Development Department
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing.
NOTICES
44271 Agency information collection activities under OMB review

Human Development Services Office
NOTICES
Grants; availability, etc.:
44440 Head Start projects

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

International Trade Administration
NOTICES
44241 Export trade certificates of review; applications

International Trade Commission
NOTICES
Import investigations:
44279 Alkaline batteries
44279 Copper-clad stainless steel cookware
44279 Flat-rolled carbon steel products from Brazil
44280 Plastic food storage containers
44280 Spindle belting from West Germany, Italy, Japan and Switzerland
44280 Tapered roller bearings and parts from Japan and Italy
44281 Trolley wheel assemblies

Justice Department
NOTICES
Pollution control; consent judgments:
44281 Environmental Conservation & Chemical Corp. et al.

Labor Department
See also Occupational Safety and Health Administration.
NOTICES
44282 Job Training Partnership Act; processing of discrimination complaints; interim guidelines

Land Management Bureau
NOTICES
Conveyance, opening, and exchange of public lands for private land:
44277 Wyoming
Conveyance and sale of public lands:
44278 Wyoming
Meetings:
44275 Susanville District Grazing Advisory Board
Sale of public lands:
44275, 44276 Idaho (2 documents)
44276 Oregon
Withdrawal and reservation of lands, proposed, etc.:
44272 Colorado

Legal Services Corporation
NOTICES
44309 Meetings; Sunshine Act

National Credit Union Administration
NOTICES
44282 Agency information collection activities under OMB review (2 documents)

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine mammals; endangered and threatened wildlife:
44237 Sea turtles; transshipment of green sea turtle products through Miami, Fla.; comment period reopened
NOTICES
Meetings:
44242 Caribbean Fishery Management Council; amendment

National Science Foundation
NOTICES
44282 Agency information collection activities under OMB review
Meetings:
44282, 44283 Behavioral and Neural Sciences Advisory Panel (2 documents)
44283 Nuclear Science Advisory Committee

Nuclear Regulatory Commission
RULES
44172 Commercial telephone number changes; Region III Office
Practice rules:
44170 Violation notices, authority to issue to non-licensees, etc.
Production and utilization facilities, domestic licensing:
44173 Backfitting process for power reactors; policy statement
PROPOSED RULES
Production and utilization facilities, domestic licensing:
44217 Backfitting process for power reactors
NOTICES
Abnormal occurrence reports:
44287 Automatic reactor trip system failure
44284 Deficiencies in management and procedural controls
44286 Water hammer, main feedwater line break
Applications, etc.:
44292 Nebraska Public Power District
44294 Niagara Mohawk Power Corp.
44295 Northern States Power Co.
Committees; establishment, renewals, terminations, etc.:
44291 Reactor Safeguards Advisory Committee; procedures
44291 Export and import license applications for nuclear facilities or materials (General Electric Co. et al.)
44310 Meetings; Sunshine Act

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
44282 Occupational Safety and Health National Advisory Committee

Personnel Management Office
NOTICES
Excepted service:
44296 Schedules A, B, and C; positions placed or revoked, update

Reclamation Bureau
NOTICES
Meetings:
44278 Colorado River Basin Salinity Control Advisory Council

Securities and Exchange Commission
RULES
Financial statements (Regulation S–X):
44198 Oil and gas producers; full cost accounting practices
Investment companies:
44202 Advertising; correction
PROPOSED RULES
Financial statements (Regulation S–X):
44221 Oil and gas producers; full cost accounting practices
Holding companies:
44226 Annual report of registered holding companies
Securities:
44224 Industry guides; amendments
NOTICES
44306 Agency information collection activities under OMB review
44305 Consolidated quotation plan; amendments
44299 Consolidated Tape Association plan; amendments
Hearings, etc.:
44300 Buttenwieser, Lawrence B., et al.
44301 Metropolitan Tower Life Insurance Co. et al.
Listed options on stock indices:
44299 Action Industries, Inc.

44310 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
44306 Chicago Board Options Exchange, Inc.
44302, 44303 New York Stock Exchange, Inc. (3 documents)
44304 Options Clearing Corp.
Self-regulatory organizations; unlisted trading privileges:
44302 Midwest Stock Exchange, Inc.

Small Business Administration
NOTICES
Meetings; regional advisory councils:
44307 Idaho
44307 Massachusetts
44307 Utah

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
44240 Pitt County Schools RC&D Measure, N.C.

Surface Mining Reclamation and Enforcement Office
RULES
Permanent and interim regulatory programs:
44344 Applications; permitting, processing, general content and legal financial compliance
PROPOSED RULES
Permanent program submission; various States:
44233 Alabama
44236 North Dakota

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration.

Treasury Department
NOTICES
Notes, Treasury:
44308 F–1990
44308 K–1987
Tax treaties, income; various countries:
44307 Indonesia and Thailand

Separate Parts in This Issue

Part II
44332 Federal Emergency Management Agency

Part III
44344 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part IV
44402 Department of Transportation, Federal Railroad Administration

Part V
44406 Department of Housing and Urban Development, Office of Assistant Secretary for Housing—Federal Housing Commission

Part VI
44426 Department of Energy, Federal Energy Regulatory Commission

Part VII
44440 Department of Health and Human Services, Office of Human Development Services

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
27 ... 44163
28 ... 44163
52 ... 44165
61 ... 44163
810 (2 documents) ... 44165, 44168
1036 ... 44170
1106 ... 44170

10 CFR
2 ... 44170
20 ... 44172
21 ... 44172
50 ... 44173
73 ... 44172
Proposed Rules:
50 ... 44217

12 CFR
543 ... 44174
544 ... 44174
546 ... 44174
552 ... 44174
563b ... 44174
569 ... 44174
571 ... 44174

14 CFR
Proposed Rules:
71 ... 44219
221 ... 44220

16 CFR
13 ... 44194

17 CFR
210 ... 44198
239 ... 44202
274 ... 44202
Proposed Rules:
210 ... 44221
229 ... 44224
250 ... 44226
259 ... 44226

21 CFR
73 ... 44202
175 ... 44203
520 ... 44203
558 ... 44204

24 CFR
Proposed Rules:
1700 ... 44406
1710 (2 documents) ... 44406, 44412
1720 ... 44406

30 CFR
701 ... 44344
770 ... 44344
771 ... 44344
773 ... 44344
774 ... 44344
775 ... 44344
777 ... 44344
778 ... 44344
782 ... 44344
786 ... 44344
787 ... 44344
788 ... 44344
Proposed Rules:
901 ... 44233
934 ... 44236

40 CFR
180 (2 documents) ... 44204, 44205

44 CFR
64 ... 44206
81 ... 44208
302 ... 44208
350 ... 44332

48 CFR
Ch. I ... 44215

50 CFR
Proposed Rules:
17 ... 44237
227 ... 44237

Rules and Regulations

Federal Register
Vol. 48, No. 189
Wednesday, September 28, 1983

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

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Cotton and Cottonseed; Revision in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will revise fees for cotton classification under the Cotton Futures Act. Fees for initial classification, review classification and micronaire determinations and certification thereof as well as supervision fees will be increased. Fees for classification and testing of cotton under the Cotton Standards Act will be increased including fees for grade, staple and micronaire readings; fees for a new memorandum or certificate; hourly fees for classification under Form C determinations; fees for practical classing examinations for cotton or cotton linters; and fees for classification or review of linters. Under the Agricultural Marketing Act of 1946, fees for licensing cottonseed samplers and chemists, fees for administration paid by chemists as well as fees for review of grading of cottonseed will be increased. All fee changes are the result of the increased costs of providing such services.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250. (202) 447-2147.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified "non-major" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Programs Operations, has determined that this action will not have a significant impact on a substantial number of small business entities because (i) The amount of the increase in fees is too small to have a significant impact, (ii) the use of the services is voluntary, and (iii) further, if there is any impact, the Secretary has to recover the costs of the services from the users of the services. This final rule becomes effective on October 1, 1983, less than 30 days after the publication date, because current revenue does not cover the cost of providing the service at this time and since all of these services are directly related to the marketing of cotton, it is desirable that all free increases have a uniform effective date of October 1, 1983, the beginning of Fiscal Year 1984. Accordingly, under the administrative provisions of 5 U.S.C. 533, good cause is shown for making this action effective October 1, 1983.

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are determined to be necessary to carry out the provisions of that Act. Pursuant to that authority, Part 27 of the regulations (7 CFR Part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. These fees have been reviewed and it has been determined that the fees which appear in section 27.80 for initial classification be increased from 95 cents per bale to $1.00 per bale; for review classification to be increased from $1.15 per bale to $1.20 per bale; for micronaire determinations from 20 cents per bale to 25 cents per bale; and for combination service from $2.10 per bale to $2.20 per bale. All supervision fees will be increased by 5 cents except for transfers of cotton to a different delivery point which will increase 10 cents. Since pursuant to section 27.85, fees for withdrawal of requests or applications are the same as the fees in section 27.80 for services completed, such charges will be affected by the proposal. Fees for certificates which appear in section 27.81 will increase from 45 cents to 50 cents.

The United States Cotton Standards Act (7 U.S.C. 51 *et seq.*) authorizes the Secretary to promulgate such regulations as found necessary and to make such expenditures as necessary for the administration of the Act. Pursuant to that authority, Part 28 (7 CFR Part 28) was promulgated to provide for regulations for cotton classings, testing and standards including applicable fees. These fees have been reviewed and it has been determined that the fees for classification of cotton or samples in section 28.116 be increased by 5 cents; for grade, staple and micronaire readings from $1.05 per sample to $1.10; for grade and staple only from 90 cents per sample to 95 cents; for grade only or staple only 65 cents to 70 cents; and for micronaire reading only from 20 cents per sample to 25 cents. The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one will increase from $1.90 to $2.00 per sheet.

Further, service fees when a request for classification of cotton withdrawn (7 CFR 28.119) after classification has begun are the same as the classification fees if completed, and such charges will be affected by this final rule. The additional hourly fee charged for Form C determinations (7 CFR 28.120 and 28.149) will increase from $14.65 per hour or each portion thereof to $15.25 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in 28.122 for complete practical classing examination for cotton or cotton linters will increase from $95 to $100.00 and fees in section 28.148 for the classification, comparison or review of linters will increase from 95 cents to $1.00 per bale or sample involved. In § 28.184, the fee for classification or comparison of cotton linters and the issuance of a memorandum will increase from 95 cents to $1.00 per sample.

Pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) the Secretary is authorized to assess and collect such fees as will be reasonable and as nearly as may be practicable to cover the cost of services rendered under the Act. The regulations promulgated pursuant to that Act for the inspection, sampling and certification of cottonseed sold or offered for sale for crushing purposes (7 CFR Part 61) includes such fees. The fee in § 61.43 for a cottonseed sampler's license will

increase from $15 to $16 for the examination while the fee for renewal of such a license will increase from $13 to $14. In § 61.44, the fee for a chemist's license will increase from $300 to $310 for the examination while the fee for renewal of such a license will increase from $100 to $105. In § 61.45, those fees to cover in part the cost of administering the regulations in Part 61 charged to each licensed cottonseed chemist will increase from $1.15 per certificate issued by the chemist to $1.20. The fee in section 61.46 for the review of the grading of any lot of cottonseed will increase from $39 to $42 with the disbursement to the two licensed chemists who performed the reanalysis increasing from $13 to $14.

Due to increases of USDA costs in providing these services since the last adjustment in fees on October 1, 1982 (47 FR 42959–42960), fees will be increased an average of about 4.0 percent. The increase in fees will be effective on October 1, 1983, the beginning of Fiscal Year 1984. The continuation of operating costs at present levels for some services necessitates an increase in fees for the coming year. Many factors are considered in calculating the cost of providing services. Increases in personnel costs have had the most significant impact on these costs. Federal salaries were increased 4.0 percent on October 1, 1982. Some increases in expeditures for rent, utilities, and communications have also occurred during that period.

These increases, along with increased costs for supplies and materials, are responsible for an overall increase in the costs of providing services of approximately 4 percent. These cotton programs will continue to be reviewed to determine their cost-effectiveness.

Proposed rulemaking was published in the July 6, 1983 **Federal Register** at 48 FR 31047 and invited comments for 60 days ending September 6, 1983. No comments were received. This final rule does not differ from the proposed rule.

List of Subjects

7 CFR Part 27

Classification, Cotton, Micronaire, Samples

7 CFR Part 28

Cotton linters, Grades, Staples

7 CFR Part 61

Cottonseed, Chemists, and Grades.

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

Accordingly, 7 CFR Parts 27, 28, and 61 are amended as follows:

1. Sections 27.80 and 27.81 are revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$1.00 per bale.

(b) Review classification and certification—$1.20 per bale.

(c) Micronaire determination and certification—25 cents per bale.

(d) Combination service—$2.20 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.20 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.20 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.30 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.55 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for his business convenience, or when made necessary by the transfer of the cotton under the supervision of an exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 50 cents for each certificate issued.

(90 Stat. 1841–1846 (7 U.S.C. 15b))

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

2 Section 28.116 is amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided in paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.10 per sample.

(2) Grade, staple only—95 cents per sample.

(3) Grade only or staple only—70 cents per sample.

(4) Micronaire reading only—25 cents per sample.

* * * * *

3. Sections 28.117, 28.120, 28.122, 28.148, and 28.149 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $2.00 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples, and the delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting the classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $15.25 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $100. Any

applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this partial reexamination is $55.

§ 28.148 Fees and costs; classification; reviews; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.00 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $15.25 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

(Sec. 10, 42 Stat. 1519; 7 U.S.C. 61, unless otherwise noted)

4. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.00 per sample.

(Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624))

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION SAMPLING AND CERTIFICATION)

5. Sections 61.43, 61.44, 61.45, and 61.46 are revised to read as follows:

§ 61.43 Fee for sampler's license.

For the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $16, but no additional charge shall be made for the issuance of a license. For each renewal of a sampler's license the fee shall be $14.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $310, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $105.

§ 61.45 Fee for certificates to be paid by licensee to Service.

To cover in part the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.20 for each certificate of the grade of cottonseed issued by him. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $42. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $14 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

(Secs. 203 and 205, 60 Stat. 1087 and 1090, as amended (7 U.S.C. 1622 and 1624))

Dated: September 23, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-26414 Filed 9-27-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 52

United States Standards for Grades of Canned Sweetpotatoes

Correction

In FR Doc. 83-25381 beginning on page 41571 in the issue of Friday, September 16, 1983, make the following corrections:

1. In § 52.2045, on page 41572, second column, last line of paragraph (a)(2), "appearance of" should read "appearance or", and "or the unit" should read "of the unit".

2. Also in the same section, third column of page 41572, last line of paragraph (f)(1), "appearance of" should read "appearance or".

3. On page 41573, in § 52.2053, under Table III in the entry for "Very soft", "100% by count . . . 10% . . . 100%" should read "10% by count . . . 100% . . . 100%."

BILLING CODE 1505-01-M

Federal Grain Inspection Service

7 CFR Part 810

Revision to the Basis of Determination of Odor in the U.S. Standards for Wheat, Corn, Barley, Rye, Sorghum, Flaxseed, and Triticale

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the U.S. Standards for Wheat, Corn, Barley, Rye, Sorghum, Flaxseed, and Triticale so the determination of odor may be performed either prior to or after mechanical cleaning of samples of grain to be inspected. FGIS proposed in the March 4, 1983, **Federal Register** (48 FR 9282) that the basis of determination of odor in these grain standards be revised to reduce the degree of health risk to grain inspectors from inhalation of certain components in samples of grain. Thirteen comments were received on the proposal, and a majority supported a revision of the basis of determination of odor for these grains.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Regulations and Directives Unit, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (the Act) and section 800.4 (7 CFR 800.4) of the regulations, no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. This revision to the basis of determination of odor in the standards of wheat, corn, barley, rye, sorghum, flaxseed, and triticale will permit odor determination either prior to or after mechanical cleaning of samples of grain to be

inspected. Mechanical cleaning removes or helps dissipate certain components commonly found in samples of grain which may cause respiratory problems if inhaled repeatedly over a long period of time. In view of these health concerns, the Administrator has determined that the public health, interest and safety requires that the amendments to the standards made herein become effective 30 days after publication of this final rule in the **Federal Register.**

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the action will not markedly change the overall inspection procedure or adversely affect the accuracy of inspection results. Changing the basis of determination of odor in the standards for wheat, corn, barley, rye, sorghum, flaxseed, and triticale will offer an alternative which provides a greater measure of safety than the present method of determining odor in grain while maintaining the accuracy required in the inspection process. Inspections are performed by FGIS, delegated states, and designated official agencies. These limited number of delegated states and designated official agencies are not considered small entities because they are dominant in their areas of operation based upon the mandated delegation/designation process under the U.S. Grain Standards Act. Further, most users of official services are not considered to be small entities.

Final Action

The U.S. Standards for Grain specify that odor is a grade determining factor and must be performed prior to removal of any material from the sample of grain, i.e., on the basis of the sample as a whole, grain as a whole, or test portion of the original sample. However, performing the odor determination prior to mechanical cleaning may result in the inhalation of potentially irritating and/or toxic materials, such as grain dust, molds, and pesticides, which may represent a potential health hazard to grain inspectors if inhaled repeatedly over a long period of time.

A proposed rule to revise the basis of determination of odor in the standards for wheat, corn, barley, rye, sorghum, flaxseed, and triticale was published in the March 4, 1983, **Federal Register** (48 FR 9282), and comments were solicited during a 60-day comment period. A total of thirteen comments were received. On the basis of these comments and all available information, FGIS is revising these standards so the odor determination procedure may be performed either prior to or after mechanical cleaning of the sample of grain to be inspected.

Performing the odor determination on samples of wheat, corn, barley, rye, sorghum, flaxseed, and triticale which have been mechanically cleaned by use of a Carter Dockage Tester or other equipment approved by the Administrator, reduces the potential health hazard to grain inspectors. Mechanical cleaning eliminates a large portion of the grain dust and foreign matter and has a tendency to aerate the grain. Aeration hastens the dissipation of insecticides and other pesticides, if present, and helps reduce the concentration to which the grain inspector may be exposed when determining odor.

The standards for soybeans, oats, and mixed grain do not include a process to mechanically clean samples which are officially inspected. The odor determination procedure for these grains must, therefore, be performed on the grain as a whole, that is, the test portion of the original sample. This should, however, have little, if any, effect on the health of grain inspectors. Soybeans are seldom treated with pesticides and generally contain less dust than other types of grain. The number of oats and mixed grain inspections is low compared to the number of inspections for most of the other grains for which standards have been established.

The thirteen comments received as a result of the proposed rulemaking were from interested parties associated with grain inspection and marketing. Of the thirteen comments, two indicated opposition to the proposal; one favored the use of a special device to perform odor determinations; and ten indicated varying degrees of support for the proposed change.

One of the commenters opposed to the proposal stated that odor in dockage could affect sound grain and mechanical cleaning could reduce the accuracy of the odor determination procedure. It is rare, however, that an odor is present only in the dockage since few contaminants can impart an odor to a sample of grain prior to cleaning but leave no odor after cleaning. If the dockage contains material which has an odor, such as a large number of weed seeds, the odor will usually carry over to the kernels of grain. Studies by FGIS have indicated that cleaning does not affect the accuracy of the procedure, but by FGIS Instructions inspectors will be able to recombine separations and recheck a sample for odor as necessary.

The other commenter opposed to the proposal stated that mechanical cleaning does not adequately protect the grain inspector from inhalation of pesticides so each sample should be pretested for pesticide concentration before the odor check. This revision of the odor determination procedure is considered an important process to safeguard inspectors against any potential health hazard resulting from the inhalation of pesticides, dust, and other irritants.

The special device which one commenter favored as a safety measure for determining odor in grain is a tube-like instrument used to sniff the grain. The inspector would insert the device into the grain and check for odor by smelling the grain through the device. The FGIS, Board of Appeals and Review, tested this device and determined that it did not produce consistent odor results. It was, therefore, not approved for use by official inspection personnel.

Of the ten commenters who supported the proposed change, four indicated complete concurrence while six mentioned particular aspects of the odor determination procedure which, in their opinion, deserve additional consideration. These aspects include the need for more research on health problems associated with checking grain for odor, the value of providing an option to perform odor determinations on mechanically cleaned or whole samples, and the need to perform odor determinations on hand-sieved subsamples and component samples. An evaluation as to the need for and scope of additional considerations of these matters will be made in the future.

Although no known research has been performed on health problems directly attributable to smelling samples of grain, studies have indicated that inhalation of grain dust, molds, and pesticides is a potential health hazard. To properly check for odor, the grain inspector must insert his nose into the sample and thoroughly smell the grain; therefore, material in the sample may be inhaled during the odor check. Studies by FGIS have shown that mechanical cleaning removes a large portion of the fine dust in the sample and helps reduce

the concentration of pesticides. Other studies have indicated that mechanical cleaning does not affect the accuracy of the odor determination procedure.

The option to recombine separations and perform the odor determination on whole samples of grain if an odor is suspected in a cleaned sample will be provided by FGIS Instructions. As indicated, rare instances may occur when a recheck of the whole sample is necessary to assure a maximum degree of accuracy. Also, grain samplers are instructed to note on the grain sample ticket if a foreign odor is suspected in a lot of grain, so a preliminary odor check on the whole sample may be performed at the time of sampling; however, samplers must use good judgment when checking the odor of whole samples, especially if it is suspected that a pesticide is present.

Further, an odor check on hand-sieved subsamples and component samples at export is permissible since mechanical cleaning of these samples prior to the odor check would be inconvenient and time consuming. Hand-sieving removes a large portion of the fine foreign material from samples of grain; however, samplers must also use good judgment when checking the odor of hand-sieved samples.

Accordingly, the basis of determination of odor is being revised so the odor determination may be performed either prior to or after removal of dockage from wheat, barley, rye, flaxseed, and triticale; dockage and broken kernels, foreign material and other grains from sorghum; and broken corn and foreign material from corn.

The revisions contained in this final rule are the same as those published in the proposed rule of March 4, 1983 (48 FR 9282). Included in the proposal were nonsubstantive changes to make the "Basis of determination" plural in §§ 810.203, 810.303, 810.352(a), 810.553, and 810.653, and to delete the word "grade" in § 810.409(a). These nonsubstantive changes are being made to achieve uniformity in format and structure within all the standards under the Act.

List of Subjects in 7 CFR Part 810

Exports, Grains.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, §§ 810.203, 810.303 (b) and (c), 810.352(a), 810.409(a), 810.508, 810.553, and 810.653 (b) and (c) are revised

United States Standards for Barley

Principles Governing the Application of the Standards

1. Section 810.203 is revised to read as follows:

§ 810.203 Basis of determinations.

Each determination of dockage, moisture, temperature, garlic, live weevils or other insects injurious to stored grain, crotalaria seeds, large stones, castor beans, broken glass, animal filth, an unknown foreign substance, a commonly recognized harmful or toxic substance, and otherwise distinctly low quality shall be upon the basis of the grain as a whole. Each determination of heat-damaged kernels, white aleurone layers in Six-rowed Malting Barley; and blue aleurone layers in Six-rowed Blue Malting Barley shall be determined on a test portion of pearled, dockage-free barley. All other determinations shall be on a test portion of barley when free from dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from dockage.

United States Standards for Wheat

Principles Governing Application of Standards

2. Section 810.303 (b) and (c) are revised to read as follows:

§ 810.303 Basis of determinations.

* * * * *

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance, and a commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage; except that the determination of heat-damaged kernels, damaged kernels (total), and foreign material shall be upon the basis of the grain when free from dockage and shrunken and broken kernels; and the determination of odor shall be upon either the basis of the sample as a whole or the grain when free from dockage.

United States Standards for Corn

3. Section 810.352(a) is revised to read as follows:

§ 810.352 Principles governing the application of the standards.

* * * * *

(a) *Basis of determinations.* Each determination of class, damaged kernels, heat-damaged kernels, flint corn, and flint and dent corn shall be upon the basis of the grain after the removal of the broken corn and foreign material. All other determinations shall be upon the basis of the grain as a whole, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after removal of the broken corn and foreign material.

* * * * *

United States Standards for Rye

4. Section 810.409(a) is revised to read as follows:

§ 810.409 Grade factors; definitions.

(a) *Basis of determinations.* Each determination of dockage, temperature, garlic, and live weevils or other insects injurious to stored grain shall be upon the basis of the grain as a whole. All other determinations shall be upon the basis of the grain when free from dockage, except the determination of odor shall be upon the basis of the grain as a whole or the grain when free from dockage.

* * * * *

United States Standards for Flaxseed

5. Section 810.508 is revised to read as follows:

§ 810.508 Basis of determinations.

Each determination of moisture, test weight per bushel, heat-damaged flaxseed, and damaged flaxseed shall be upon the basis of the grain after the removal of that part of the dockage which can be removed readily by the use of appropriate sieves and cleaning devices. All other determinations shall be upon the basis of the grain as a whole, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after the removal of that part of the dockage which can be removed readily by the use of approved sieves and cleaning devices.

United States Standards for Sorghum

Principles Governing Application of Standards

6. Section 810.553 is revised to read as follows:

§ 810.553 Basis of determinations.

Each determination of "broken kernels, foreign material, and other grains" shall be determined on a test portion of the grain sample when free from dockage. Each determination of

class, damaged kernels, heat-damaged kernels, and stones shall be determined on a test portion of the grain sample when free from dockage, and that portion of the "broken kernels, foreign material, and other grains" which will pass through a 5/64 inch triangular-hole seive (see § 810.552(k)). All other determinations shall be on a test portion of the original sample, except the determination of odor shall be on either a test portion of the original sample, except the determination of odor shall be on either a test portion of the original sample or a test portion of the grain sample when free from dockage, and that part of the "broken kernels, foreign material, and other grains" which will pass through a 5/64 inch triangular-hole sieve.

United States Standards for Triticale

Principles Governing the Application of the Standards

7. Section 810.653(b) and (c) are revised to read as follows:

§ 810.653 Basis of determinations.

* * * * *

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance, and a commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage; except that the determination of heat-damaged kernels, damaged kernels (total), material other than wheat or rye, and foreign material (total) shall be upon the basis of the grain when free from dockage and shrunken and broken kernels; and the determination of odor shall be upon either the basis of the sample as a whole or the grain when free from dockage.

(Secs. 5, 18, Pub. L. 95-583, 90 Stat. 2869, 2884 (7 U.S.C. 78, 87(e)))

Dated: September 12, 1983.

Kenneth A. Gilles,

Administrator, Federal Grain Inspection Service.

[FR Doc. 83-26360 Filed 9-27-83; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 810

Amendment to U.S. Standards for Sorghum

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Sorghum. The standards are amended by redefining the classes of sorghum to permit a larger proportion of the sorghum crop to be graded White Sorghum. The definition of the class White Sorghum is made less restrictive by permitting white colored sorghum with dark spots which cover 25.0 percent or less of the kernel to be considered White Sorghum. By easing the color restrictions in the class White Sorghum, more sorghum would be available for buyers who prefer to use white-colored sorghum for food, feed, or industrial uses. An additional descriptive term for pericarps is included in the definitions. Also, other miscellaneous changes of a nonsubstantive nature are made.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Regulations and Directives Unit, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation as establishd in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant impact on a substantial number of small entities because most users of sorghum inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b) the Act) and section 800.4 (7 CFR 800.4) of the regulations, no standards established or amendments or revocation of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety requires that they become effective sooner. Therefore, ordinarily, these standards would not become effective until August, 1984. However, because the sorghum harvest in the southern production area begins in early July, and because making the standards less restrictive to permit a larger proportion of the crop to be graded White Sorghum together with the changes herein would make more sorghum available for buyers who prefer to use white-colored sorghum, the Administrator has determined that the public interest requires that the amendments become effective July 1, 1984. Further, such action is within the scope of the declared policy of congress in section 2 of the Act and will promote the marketing of sorghum. Also, there is sufficient time for all interested parties to prepare for implementation of the amendments. To facilitate the marketing of white Sorghum, the effective date of the changes should coincide with the beginning of the harvest year, July 1, 1984.

Standards Review

In conformance with the requirements for the periodic review of existing regulations, FGIS has reviewed the U.S. Standards for Sorghum (7 CFR 810.551-810.560). This review included a determination of the continued need for the standards; and a determination of the potential for improving the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective was to assure that the standards continue to serve the needs of the market to the greatest extent.

Pursuant to section 4 of the Act (7 U.S.C. 76), a notice concerning a proposed amendment to the United States Standards for Sorghum was published in the **Federal Register** (48 FR 9280) on March 4, 1983, according to the administrative procedure provisions of 5 U.S.C. 553. Those proposals are now finalized without change.

In addition to publication of the proposal in the **Federal Register**, approximately 900 copies of the proposal were distributed to interested members of the grain industry. Eight comments were received in response to the proposal. All comments either supported the changes, or expressed no objection to the changes. Additionally, a public meeting was conducted at Corpus Christi, Texas on April 4, 1983, at which

23 interested persons participated in a discussion of the proposed changes. No objections to the changes were expressed at the public meeting; however, a discussion by several industry members indicated that the 2.0 percent of kernels of other colors permitted in the class White Sorghum may be too restrictive. The discussion included the possible difficulty in maintaining the purity of the grain as it moves through marketing channels, availability of a market for the product, premiums which may be asked, and the possibility of relaxing the 2.0 percent limit for kernels of other colors. One suggestion for relaxing the 2.0 percent requirement was the use of graduated limits, i.e., a limit of 4.0 percent for grade No. 1 and 6.0 percent for grade No. 2 for kernels of other colors in White Sorghum. the suggestion appealed to several persons who were handlers of sorghum. Any change with respect to the 2.0 percent would necessitate a new proposed rule. It was the concensus of the group present that the standards should be amended as proposed and if the new definitions did not materially aid in the marketing of white sorghum, further consideration and appropriate action could be taken to relax the requirement.

Prior to 1974, the classes White, Yellow, and Brown Sorghum were permitted to contain up to 10 percent of sorghum of any other color, singly or combined. An excess of 10.0 percent of kernels of any other color would grade a lot as Mixed Sorghum. Colored spots upon kernels otherwise white in color did not affect their classification as White Sorghum.

Effective in 1974, changes, which had been originally proposed by sorghum breeders and producers of sorghum seed were made in the definiton of the sorghum classes to upgrade the class White Sorghum as a premium quality product which could be used as a food-grade, feed, and industrial commodity. Changes included: (1) A tightening of requirements to permit not more than 2.0 percent of sorghum of any other color in the class White Sorghum, (2) classing as Yellow Sorghum all white-colored sorghum containing colored spots, and (3) retaining in Yellow Sorghum the 10.0 percent limit for other classes but considering only Brown Sorghum as other classes. At that time it was recognized that only a limited acreage of White Sorghum was produced in the United States but it was anticipated with that new White Sorghum varieties available, White Sorghum would become more acceptable to producers because of the adopted changes to the standards.

The first change made effective in 1974 was not unique, since the class White Corn incorporates an identical requirement. It created an evenly-colored class, not adulterated with a significant amount of kernels of other colors. The second and thrid changes made effective in 1974 modified the class Yellow Sorghum to contain a mixture of white and yellow kernels to be used for food or feed purposes in which the purity of pericarp color is not as important. The second change also had the effect of limiting the certification of the class White Sorghum because almost all white-colored sorghum contained a few colored spots, thereby disqualifying most white-colored sorghum from being classed White Sorghum.

It has been presently determined that very little, if any white-colored sorghum will grow to maturity without developing one or more colored spots on the pericarp. Spots develop on the pericarp as a result of staining, through contact with the glume, or as a result of insects feeding on the immature kernels. FGIS is in agreement with sorghum specialists at Texas A&M University that: (1) White-colored sorghum containing spots covering 25% or less of the kernel would be acceptable as White Sorghum, (2) sorghum with translucent pericarps which present a white or a slightly yellowish or waxy color would also be classed as White Sorghum provided they do not exceed the limitation of the class, and (3) since sorghum specialists have found that in Brown Sorghum the color on the subcoat ranges from a brown to a purplish hue, the term pigmented subcoat is more descriptive.

White-colored sorghum containing spots covering 25% or less of the kernel would be acceptable as White Sorghum because such levels would meet optimum market satisfaction as well as permit inspections to be performed with a minimum of difficulty.

Presently the definitions of white and yellow sorghum do not include translucent pericarps. Translucent pericarps are pericarps which are so thin that one can see through them; the kernels often appear to be slightly yellow. However, these pericarps are actually white pericarps. Inclusion of translucent pericarps in the definition of White Sorghum would have the effect of classifying as White Sorghum those kernels which presently would be classified as Yellow Sorghum. The change in White Sorghum necessitated a similar concurrent change in Yellow Sorghum.

Therefore, FGIS proposed that: (1) White-colored sorghum containing spots which singly or in combination cover 25.0 percent or less of the kernel be classed as White Sorghum, (2) sorghum with translucent pericarps be included in the definition of White and Yellow Sorghum, and (3) the definition of Brown Sorghum be changed to include sorghum with brown pericarps or pigmented subcoats.

At the time the 1974 changes were adopted, markets for white-colored sorghum had not been developed. This marketing situation continued until recently. Markets for white-colored sorghum are being developed, and it is anticipated that export volumes could reach significant levels if adequate supplies could be made available by U.S. producers. To do so, the standards need to provide a classification of White Sorghum which contains criteria which could be met by currently-grown commercial varieties.

A nonsubstantive change to the order of the definitions in § 810.552(b) (1) through (4) is being made for clarity and consistency with other grain standards.

No further changes to the sorghum standards are being made pursuant to the review of the standards referenced herein.

List of Subjects in 7 CFR Part 810

Exports, Grains.

PART 810—[AMENDED]

Accordingly, § 810.552(b) of the United States Standards is revised to read as follows:

§ 810.552 Definitions of other terms.

* * * * *

(b) *Classes.* The following four classes:

(1) *White Sorghum.* Sorghum with white or translucent pericarps. Such sorghum containing spots which singly or in combination cover 25.0 percent or less of the kernel shall be considered as White Sorghum. White Sorghum shall contain not more than 2.0 percent (singly or combined) of kernels of sorghum of other colors.

(2) *Yellow Sorghum.* Sorghum with yellow, salmon-pink, red, white, or translucent pericarps, which contains not more than 10.0 percent of sorghum with brown pericarps or pigmented subcoats, and which does not meet the requirements for the class White Sorghum.

(3) *Brown Sorghum.* Sorghum with brown pericarps or pigmented subcoats

which contains not more than 10.0 percent of sorghum of other colors.

(4) *Mixed Sorghum.* Sorghum which does not meet the requirements for any of the classes White Sorghum, Yellow Sorghum or Brown Sorghum.

* * * * *

(Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e))

Dated: September 8, 1983.

Kenneth A. Gilles,

Administrator, FGIS.

[FR Doc. 83–26359 Filed 9–27–83; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 1036

[Milk Order No. 36]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Order Suspending Certain Provisions

Correction

In FR Doc. 83–25451 beginning on page 41753 in the issue of Monday, September 19, 1983, make the following correction:

On page 41754, third column, "**EFFECTIVE DATE:** September 9, 1983" should read "**EFFECTIVE DATE:** September 19, 1983".

BILLING CODE 1505–01–M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Temporary Revision of the Supply Plant Shipping Percentage

Correction

In FR Doc. 83–24864, beginning on page 41015, in the issue of Tuesday, September 13, 1983, on page 41016, in the first column, the effective date should read "September 13, 1983".

BILLING CODE 1505–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Authority to Issue Notices of Violation to Non-Licensees and Delegation of Authority to Regional Administrators

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect its existing legal authority to issue a notice of violation to any person subject to the jurisdiction of the Commission, including a non-licensee. The amendment requires those persons to reply formally to a notice of violation. In addition, the amendment codifies the authority of Regional Administrators to issue notices of violation.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Jane A. Axelrad, Director of Enforcement, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492–4909.

SUPPLEMENTARY INFORMATION: On November 15, 1982, the Nuclear Regulatory Commission published in the **Federal Register** (47 FR 51402) a notice of proposed rulemaking containing proposed amendments to 10 CFR Part 2. The amendments would codify the Commission's legal authority to issue a notice of violation to any person subject to the jurisdiction of the Commission, including a non-licensee, and would require that person to reply formally to the notice of violation. In addition, the amendments would codify the authority of Regional Administrators to issue notices of violation.

As presently written, § 2.201 of the Commission's regulations, "Notice of violation," provides for issuance of notices of violations to NRC licensees. In general, the Commission's regulatory authority is limited to NRC licensees or persons who are required to obtain a license under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974 (ERA). However, in some regulatory areas, the Congress has extended the Commission's statutory authority to include non-licensees as well as licensees. For example, pursuant to section 206 of the ERA, 42 U.S.C. 5846, and the Commission's implementing regulation, 10 CFR Part 21, "Reporting of Defects and Noncompliance," persons who supply components important to the safety of facilities or activities licensed by the NRC are subject to certain reporting and related requirements intended to ensure that the Commission is promptly informed of defects in such components.

Section 206(d) of the Energy Reorganization Act specifically authorizes the Commission to conduct reasonable inspections and other enforcement activities needed to ensure compliance. The Commission has, on a case-by-case basis, required non-licensees to respond in writing to notices of noncompliance issued under the authority of section 206(d) of the ERA. However, as noted above, this authority is not currently reflected in 10 CFR 2.201 even though non-licensees are subject to Section 206 of the ERA and the Commission's implementing regulations.[1]

To correct this discrepancy, the Commission is amending §§ 2.200 and 2.201 of its regulations to specifically authorize the issuance of notices of violation to any person subject to the jurisdiction of the Commission, including nonlicensees. These amendments specify that a notice of violation issued to a non-licensee subject to the jurisdiction of the Commission will require a written explanation in accordance with the existing provisions of § 2.201 (a) and (b).

In addition, the functions of the Commission's Regional Offices have been upgraded in NRC Manual Chapter 0128 (a copy of which is available for inspection at the NRC Public Document Room at 1717 H Street NW., Washington, D.C.) to provide enhanced responsibilities and duties to the position of Regional Administrator. Section 027 of Manual Chapter 0128 authorizes the Regional Administrator to issue notices of violation. (Formerly, the Regional Offices were headed by Regional Directors and these Directors were delegated authority by the Commission to issue notices of violation. This authority had not been expressly codified in the regulations.)

Therefore, the Commission is amending its regulations to expressly provide that Regional Administrators or their designees are authorized to issue notices of violation under § 2.201.

The **Federal Register** notice provided a 30-day period for public comment. The Commission received six (6) comments in response to the notice. Copies of these comments may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. The NRC response to the comments is provided below.

Several of the commenters questioned the use of the phrase "person subject to the jurisdiction of the Commission" to describe those non-licensees affected by this rulemaking. One commenter wanted to specifically exclude utility employees. One argued that since section 234 of the Atomic Energy Act does not apply to non-licensed employees of power reactor licensees, the Commission should state that it intends to issue notices of violation only to employees specifically subject to Commission jurisdiction. One commenter wanted to

[1] The regulations do, however, allow the imposition of civil penalties, a more severe form of enforcement action, on non-licensees. *See* 10 CFR 2.200.

delete all references to persons because whereas the licensee accepts regulation by applying for a license, the non-licensee does not.

The Commission's intent in utilizing the phrase "any person subject to the jurisdiction of the Commission" is to describe those entities, in addition to those licensed by the Commission, which must comply with certain regulations promulgated by the Commission pursuant to its statutory authority. Although "person" is broadly defined in 10 CFR 2.4(o), the final rule authorizes enforcement actions against only those non-licensed persons who fall within the scope of the Commission's statutory authority. A significant source of statutory authority over such non-licensees is section 206 of the ERA (42 U.S.C. 5846). Section 206 places a statutory obligation upon those entities working in the nuclear industry, including entities supplying basic components, to identify and report defects in those components to the NRC. Moreover, section 206(d) authorizes the NRC to conduct enforcement activities as needed to insure compliance with its provisions. Because 10 CFR Part 21 of the Commission's regulations, entitled "Reporting of Defects and Noncompliance," implements section 206, it is primarily Part 21 violations for which the NRC will issue notices of violation against non-licensees.

By promulgating this rule change, the Commission simply intends to formalize the procedure for taking enforcement action under its present authority. It is not the intent of the rule to expand that authority. The Commission does not view the final rule as a departure from its present enforcement policy, but rather as a codification of current practice. The staff has issued notices to non-licensees in violation of Part 21 reporting requirements for a number of years. The final rule merely conforms the Commission's regulations to this practice. However, the Commission's emphasis on section 206 of the Energy Reorganization Act and Part 21 should not be read to restrict to those provisions the Commission's authority to issue notices of violation under the final rule. For example, a notice of violation might also be issued for violations of section 210(a) of the ERA (42 U.S.C. 5851(a)), which prohibits discrimination against employees for contacting, or attempting to contact, the Commission. Accordingly, the Commission will issue notices of violation against non-licensees in appropriate cases when requirements directly imposed upon non-licensees are violated. This view is consistent with previously stated Commission policy. *See* General Statement of Policy and Procedure for Enforcement Actions, 47 FR 9987, 9991 n.3 (March 9, 1982) (Enforcement Policy).

Several commenters asserted that the proposed rule change is unnecessary, pointing to the success of voluntary compliance and the ability of the Commission to exert its authority over licensees to ensure that non-licensee contractors comply with the applicable NRC regulations. While the Commission acknowledges the advantages of voluntary compliance, as well as of licensees taking an active role in ensuring that their contractors comply with NRC requirements, the Commission needs to be able to issue notices of violation against non-licensees in appropriate cases. The notice of violation serves not only to identify noncompliance with an NRC requirement, but also to require the recipient to identify the corrective action it will take in response to the noncompliance. Section 2.201, in its present and revised versions, requires the recipient of a notice of violation to respond to the notice by describing: (1) Corrective steps taken and results achieved; (2) corrective steps to be taken; and (3) the date when full compliance with NRC requirements will be achieved. By compelling a non-licensee subject to NRC regulations to describe the remedial action it has taken or will take to correct a violation, the Commission seeks to prevent recurrence of similar violations. The authority to issue a notice of violation against a non-licensee directly would also be particularly effective in cases where the non-licensee supplied a defective component to numerous licensees. By taking enforcement action against the non-licensee, the Commission would not necessarily need to take enforcement action against each licensee using the defective component, nor be forced to take enforcement action against one particular licensee.

Two commenters maintained that the proposed rule would not provide greater incentive for compliance with section 206 of the ERA. The Commission disagrees. Documenting a non-licensee's violation through issuance of a notice of violation is expected to provide greater incentive for compliance with NRC requirements. A notice of violation calls a licensee's attention to potential problems with the work of a particular non-licensee.

Several commenters cautioned the Commission against taking action which could infringe upon the rights of individuals. One commenter pointed to section 223(b), a criminal provision of the Atomic Energy Act, to illustrate both the inappropriateness of requiring admissions from natural persons and the potential for criminal sanctions as a result of failing to respond to a notice of violation issued pursuant to § 2.201. Another commenter, in urging deletion of all references in the new rule to persons subject to the jurisdiction of the Commission, felt that violations by non-licensees should be governed by § 2.205 of the Commission's regulations. This commenter viewed § 2.205 as affording a "greater semblance of due process" to non-licensees than provided by the amendment to § 2.201.

The Commission acknowledges that enforcement actions against individuals will be determined on a case-by-case basis, as provided in the Enforcement Policy. *See* 47 FR 9987, 9991 (March 9, 1982). Although § 2.205 of the Commission's regulations would appear to provide greater procedural protections, it should be recognized that § 2.205 sets forth the procedure for imposition of civil monetary penalties, an enforcement action which differs from that of issuing notices of violation and for which greater procedural protections are appropriate. The present rulemaking is concerned only with § 2.201, and the Commission believes that the procedural protections in that section are adequate.

In responding to concerns regarding criminal sanctions, the Commission notes that § 2.201 is a civil provision. An individual engaged in an activity for which a notice of violation could be issued under the Commission's statutory authority would be required to respond to the notice. Section 223(b) of the Atomic Energy Act provides for criminal liability only when knowing and willful violations of the Atomic Energy Act—or rules, regulations or orders issued thereunder—are committed. The mere issuance of a notice of violation does not mean that criminal sanctions would be appropriate.

Several comments were also submitted concerning the delegation of authority to Regional Administrators or their designees to issue notices of violation against both licensees and non-licensees. One commenter supported the delegation as to notices of violation directed against licensees, but opposed regional issuance of notices of violation against non-licensees, citing in support of its position the need for centralized control. Another commenter opposed any such delegation to the Regional Administrators, fearing inconsistent application of policy among the five NRC regions.

The Commission notes that as a practical matter, enforcement action against non-licensees is currently centralized in the NRC Region IV office, which is charged with implementation of the vendor program. The bulk of non-licensees subject to NRC jurisdiction are within this program. Most, if not all, notices of violation to be issued against non-licensees can be expected to originate from Region IV. As a result, no substantially greater uniformity would be achieved by having the Director of the Office of Inspection and Enforcement issue notices of violation against non-licensees. In responding to comments concerning delegation of duties to the Regional Administrators, the Commission notes that the NRC Regional Administrators have routinely issued notices of violation for the last several years. The final rule merely codifies this delegation of authority. However, the Director of the Office of Inspection and Enforcement is responsible for the Commission's enforcement program. Therefore, a non-licensee who has been issued a notice of violation and believes it has been unfairly treated may seek review with the Director. *See* Policy Statement on Regionalization, 48 FR 12619 (March 25, 1983).

Paperwork Reduction Act Statement

The collection of information this final rule contains is exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3518(c)(1)).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Non-licensees subject to NRC jurisdiction have been required, on a case-by-case basis under the authority of section 206(d) of the ERA, to respond to violations of NRC requirements to assure that the Commission has adequate information concerning corrective action to carry out its statutory responsibilities. This rule is designed to formalize the current practice.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adopting the following amendments to 10 CFR Part 2, which are published as a document subject to codification.

PART 2—RULES OF PRACTICE

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606, also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A is also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135)).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedure in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission.

* * * * *

3. In § 2.201, paragraphs (a) and (b) are revised to read as follows:

§ 2.201 Notice of violation.

(a) Before instituting any proceeding to modify, suspend, or revoke a license or to take other action for alleged violation of any provision of the Act or this chapter or the conditions of the license, the Director, Office of Inspection and Enforcement, a Regional Administrator, or the designee of either, will serve on the licensee or other person subject to the jurisdiction of the Commission a written notice of violation, except as provided in paragraph (c) of this section. The notice of violation will concisely state the alleged violation and will require that the licensee or any other person submit, within twenty (20) days of the date of the notice or other specified time, a written explanation or statement in reply including:

(1) Corrective steps which have been taken by the licensee or other person and the results achieved;

(2) Corrective steps which will be taken; and

(3) The date when full compliance will be achieved.

(b) The notice may require the licensee or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Director, Office of Inspection and Enforcement, may issue an order to show cause why the license should not be modified, suspended or revoked or why such other action as may be proper should not be taken.

* * * * *

Dated at Washington, D.C. this 21st day of September, 1983.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 83–26457 Filed 9–27–83; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Parts 20, 21, and 73

Commercial Telephone Number Change; Region III Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate a change in the telephone number for the NRC's Region III Office. This document changes the implementation date of the previously announced change in the commercial telephone number and indicates a change in the FTS telephone number. The amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: September 12, 1983.

FOR FURTHER INFORMATION CONTACT: Pearl Smidth, Telephone: (312) 384–2726.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 25, 1983 (48 FR 38604), the Nuclear Regulatory Commission announced a change in the commercial telephone number for the NRC's Region III Office located at 799 Roosevelt Road, Glen Ellyn, Illinois, that was to have been effective in August 22, 1983. However, because of the recent telephone strike, this change did not occur as scheduled.

This document announces the new implementation date for the change in the commercial telephone number and also announces a changed FTS telephone number for the Region III Office. Effective 7:30 am CDT, September 12, 1983, the numbers for the Region III Office are changed to: Commercial—(312) 790–5500 and FTS—388–5500.

Because this is a non substantive amendment dealing with a purely administrative matter of agency management, the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) do not apply and the amendment is effective September 12, 1983.

List of Subjects

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting requirements.

10 CFR Part 73

Hazardous materials-transportation, Incorporation by reference, Nuclear material, Nuclear power plants and reactors, Penalty, Reporting requirements, Security measures.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the 5 U.S.C. 552, the following amendments to 10 CFR Parts 20, 21, and 73 are published as a document subject codification. The authority citation for this document is:

(Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201))

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. In Appendix D to Part 20, the telephone number for Region III is revised to read as follows:

Appendix D—United States Nuclear Regulatory Commission Regional Offices

* * * * *

Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137, (312) 790–5500, (FTS) 388–5500.

* * * * *

PART 21—[AMENDED]

§ 21.2 [Amended]

2. In footnote 1, of § 21.2 the commercial telephone number for NRC Region III is revised to read, (312) 790–5500.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

3. In Appendix A of Part 73, the telephone number for Region III is revised to read as follows:

Appendix A.—United States Nuclear Regulatory Commission Regional Offices

* * * * *

Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137, (312) 790–5500, (FTS) 388–5500.

Dated at Bethesda, Maryland, this 9th day of September 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83–25448 Filed 9–27–83; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: The Commission has completed an initial review of NRC requirements and staff practices for the imposition of new regulatory requirements for power reactors, a process commonly referred to as "backfitting." Based upon this review, the Commission has concluded that existing NRC regulations on backfitting and past staff practices do not adequately identify and justify proposed new requirements. To correct this deficiency, the Commission has directed the staff to implement certain interim measures which are described in the policy statement.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301–492–8693.

SUPPLEMENTARY INFORMATION:

Policy Statement

The Commission has completed an initial review of NRC requirements and staff practices for the imposition of new regulatory requirements for power reactors, a process more commonly referred to as "backfitting". This backfitting process can include both plant-specific changes and generic changes that are proposed to be applied to one or more classes of power reactors. Based upon this initial review, the Commission has concluded that existing NRC regulations on backfitting (10 CFR 50.109) and past staff practice do not adequately identify and justify proposed new requirements.

To correct this inadequacy the Commission has directed the staff to implement certain interim backfitting measures governing the documentation and review of new generic and plant-specific requirements that are proposed by the NRC staff. In addition, the Commission is initiating a rulemaking proceeding that is intended to replace the Commission's existing backfitting regulation with measures for the long-term management of the backfitting process. This policy statement describes the interim and long-term actions that the Commission has taken or intends to take with regard to backfitting. The Commission believes that these measures, taken together, will provide adequate management of the Commission's process for documenting, considering and deciding on proposed new generic and plant-specific requirements for power reactors.

On June 16, 1982, the Commission approved the charter for the Committee to Review Generic Requirements (CRGR). The CRGR has the responsibility to review and recommend to the Executive Director for Operations (EDO) approval or disapproval of requirements to be imposed by the NRC staff on one or more classes of power reactors. The CRGR has developed means for controlling the number and nature of the generic requirements placed by NRC on licensees. The objectives of these controls are to eliminate or remove any unnecessary burdens placed on licensees, reduce the exposure of workers to radiation in implementing some of these requirements, and conserve NRC resources while at the same time not reducing the levels of protection of public health and safety. These controls should ensure that NRC-imposed generic requirements do in fact contribute

effectively and significantly to the health and safety of the public, and do lead to utilization of both NRC and licensee resources in as optimal a fashion as possible in the overall achievement of protection of public health and safety.

The Commission has reviewed the experience gained through the operation of the CRGR during the past year. Based upon its review of that experience, the Commission is satsified with the operation of the CRGR, and believes that the CRGR provides an effective means for managing the imposition of new requirements that are proposed to be applied to one or more classes of power reactors.

On June 22, 1983, the Commission approved a set of directions to the NRC staff for documenting and considering staff proposals for new plant-specific requirements. These actions are intended to provide controls for plant-specific backfitting measures that are similar to those applied by the CRGR for generic backfitting proposals. In particular, for operating reactors the Commission has directed the NRC staff to prepare, on a plant-specific basis, a description of each staff-proposed requirement that involves a new staff position or a change in an existing staff position. The description must include a brief statement of how the proposed requirement would improve safety, and must be approved by NRC licensing management before being forwarded to the licensee.

The Commission has directed the staff to provide an informal appeal process to provide an opportunity for operating reactor licensees to discuss any areas of disagreement with a staff-proposed requirement. If, after use of the appeal process, the licensee objects to the proposed requirement, the staff must prepare an assessment of the costs and benefits of the proposed requirement that considers, to the extent practical and applicable, the information required for the review of generic requirements by the CRGR. Unless the appropriate Office Director determines that the prompt imposition of a requirement is needed to protect the public health and safety or the common defense and security, a staff-proposed requirement may not be imposed during the appeal process and, if the licensee objects, until after the cost-benefit assessment is completed and a final determination has been made that the requirement should be imposed. The NRC staff is preparing an implementation plan for satisfying the Commission's directions regarding plant-specific backfitting proposals for operating reactors. Following Commission review, the implementation plan and the appeal process will be sent to all operating reactor licensees. Finally, the Commission has directed the NRC staff to conduct a study of the feasibility of, and alternatives for, applying backfit controls to plants for which a construction permit, but not an operating license, has been issued.

These directions to the NRC staff should provide for effective interim control of plant-specific backfitting proposals for operating power reactors. The Commission's directions to the staff should also provide the information needed to decide upon possible approaches for considering new requirements for power reactors under construction. In sum, the Commission believes that these actions, in combination with the establishment of the CRGR, should provide for the effective interim management of the imposition of new requirements for power reactors.

The Commission is also initiating a rulemaking proceeding for the purpose of establishing requirements for the long-term management of the backfitting process, an action that will provide for the replacement of the current 10 CFR 50.109. In that regard, the Commission has received proposed backfitting rules from its Regulatory Reform Task Force and from the Atomic Industrial Forum (The latest AIF proposal is contained in a letter to the Commission dated July 7, 1983). In addition, the Commission has received the views of its Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals on the backfitting issue. The Commission believes that it would be helpful to obtain the views of the electric utility licensees, other elements of the nuclear industry and the public on these proposals as well as on several specific questions regarding backfitting before proceeding with a proposed rule. Therefore, the Commission is proceeding with an advance notice of proposed rulemaking (published elsewhere in this issue) to solicit comments on these questions, the backfitting rule proposals now before the Commission, and on other alternatives for the long-term management of the backfitting process. The comments received from this advance notice of proposed rulemaking, together with the experience gained in the implementation of the interim backfitting measures already imposed by the Commission and the results of the NRC staff's study of backfitting controls for power reactors under construction, should provide the information needed by the Commission to proceed with the prompt development of a proposed backfitting rule. In addition, because the Commission's existing backfitting rule (10 CFR 50.109) has only been used in rare instances and therefore has not provided an adequate basis for identifying and justifying proposed new requirements, the Commission intends, as part of the rulemaking mentioned above, to replace that provision of the Commission's regulations with a new rule.

Dated this 22nd day of September, 1983, at Washington, D.C.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 83-26450 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 543, 544, 546, 552, 563b, 569, and 571

[No. 83-528]

Charters and Bylaws Available to Federal Associations and Savings Banks

September 15, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting certain revisions to its regulations regarding the charters and bylaws of federally chartered mutual and stock savings and loan associations and savings banks. The amendments establish a single charter requirement for federal mutual institutions, whether they are savings and loan associations or savings banks, and a single charter requirement for both of those types of federal stock institutions. The provisions of the federal charters have been updated and, where necessary, clarified. The Board also eliminated prescribed bylaws and instead adopted regulatory standards by which federal institutions may fashion their own bylaws and has retained updated versions of the current bylaws as models for federal institutions. The charters and bylaws of existing institutions are not affected by the amendments except to the extent an institution chooses to amend its charter or bylaws to conform to the revised regulations. The Board has also amended the rules governing proxies for interests in mutual institutions to require that certain proxies run to the board of directors or a committee of the board in

order to ensure operational continuity. The amendments simplify and streamline the regulations governing charters and bylaws by updating and clarifying the charters and replacing bylaw requirements with standards governing internal management.

EFFECTIVE DATE: September 15, 1983.

Until October 15, 1983, federal associations that conduct their operations in compliance with the regulations as they existed prior to September 15, 1983 will be deemed in compliance with the regulations as amended by this resolution.

FOR FURTHER INFORMATION CONTACT: In regard to federally chartered mutual institutions, David A. Permut, Attorney, Division of Corporate and Regulatory Structure, Office of General Counsel (202-377-6962), and in regard to federally chartered stock institutions, James C. Stewart, Attorney, Division of Securities and Corporate Analysis, Office of General Counsel (202-377-6457), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 83-195, dated April 6, 1983, the Board proposed a number of revisions to its regulations governing the charters and bylaws of savings and loan associations and savings banks chartered by the Board (referred to collectively as "federal associations"). 48 FR 16892 (1983). The proposed revisions were designed to update the language and provisions of the charters and to consolidate the various current charters into one basic charter for federal mutual associations and one for federal stock associations. The present system of prescribed bylaws would have been replaced with a series of regulatory standards for internal corporate governance modeled upon state corporate codes. The proposed revisions included an amendment of the Board's rules governing proxies granted by members of a federal mutual association to require that proxies with a term of more than eleven months could run only to the board of directors as a whole.

The basic chartering authority of the Board is stated in section 5(a) of the Home Owners' Loan Act of 1933 ("HOLA"):

> In order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing.

12 U.S.C.A. 1464(a) (West Supp. 1983). Within these parameters, it has often been stated, the Board has the authority to regulate federal associations from their corporate cradles to their corporate graves. *People* v. *Coast Federal Savings and Loan Ass'n*, 98 F. Supp 311, 316 (S.D. Cal. 1951). The breadth of this authority has been affirmed by the Supreme Court which has recently written that the predecessor language of section 5(a) expressed no limits on the authority of the Board to regulate the operations of federal associations. *Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta*, 73 L. Ed. 2d 664, 680 (1982).

Pursuant to its chartering authority under section 5(a) of the HOLA, the Board has traditionally required federal associations to adopt the charters and bylaws set forth in the regulations for the Federal Savings and Loan System ("Federal Regulations," 12 CFR Chapter V, Subchapter C). Whenever the statutory authority of federal associations has been expanded or altered, new charters were introduced and federal associations were given the option of adopting the new charters or retaining their old charters. This procedure has resulted in a variety of available charters, some of which have outmoded provisions. In addition, the practice of prescribing bylaws has unnecessarily involved the Board in routine matters of corporate governance, since under the current regulations every deviation from the prescribed bylaws is required to be approved by the Board. Accordingly, the Board proposed to simplify and streamline the regulations governing charters and bylaws. Nineteen comment letters were received from the public and are discussed in connection with the more detailed review of the proposal which follows.

A. CHARTERS

1. Federal Mutual Savings and Loan Associations and Mutual Savings Banks

a. Proposed Amendments

The proposal retained basic elements of the existing charters for federal mutual savings and loan associations (Charter L, Charter N (Rev.)) and federal mutual savings banks (Charter B (Rev.)) as they have been set out in 12 CFR 544.1 (a), (b), and (c), while combining the three charters into a single charter for federal mutual institutions. The term "institution" was proposed to be substituted for the term "association" and "savings bank." The proposed charter contained a simple statement of purpose and powers but provided for the option of a more detailed powers section as a preapproved amendment to a mutual charter. To differentiate between federal mutual savings and loans and savings banks, the proposal contained an additional sentence that all savings banks would be required to include whether or not they chose the expanded powers section.

Section 6, pertaining to membership, was revised to exclude borrowers and credit card holders from voting membership only for associations adopting the new charters, with a provision to grand-father such current members should an existing association choose to adopt the new charter. In connection with this provision, the Board requested comment on whether the maximum number of votes a member may exercise should be increased from 400 to 1,000.

As proposed, language was removed from current charters regarding record dates and such provisions were made part of the bylaws. The shorter withdrawals provision was found to be unnecessary in view of the coverage of the statement of purposes and powers; and the longer withdrawals provision, based on a system of rotation, was removed entirely on the grounds that it was outmoded. The redemption provision was deleted because it was covered by regulation where necessary. The proposal also deleted the preapproved charter amendments concerning withdrawals, reserves, member eligibility to vote, borrowing, maximum number of votes, and acceptance of savings deposits.

The Board proposed revising the amendment procedures to require only a filing with the Secretary to the Board of any preapproved charter amendment adopted by an institution. Any charter amendment not preapproved would still be subject to prior approval by the Board before it could be adopted by the institution. Finally, the proposal revised several sections of Part 543 to reflect that the Board would no longer issue the actual charter or bylaw documents.

b. Comments

Commenters generally supported the Board's efforts to simplify and modernize its charters. One commenter thought authorizing only savers and demand accountholders to be voting members was appropriate. Another commenter asked that the Board retain separate charters for federal mutual

savings and loan associations converting into federal mutual savings banks for tax purposes. Six commenters objected to the proposed requirement of an add number of directors on a board of directors, on the grounds that it might unduly hamper an association's flexibility or operate against the best interests of merging associations trying to integrate their boards. One commenter felt that reaching a maximum of 15 members on a board should be done through attrition because of the generally large size of mutual savings banks' boards of trustees. Several commenters objected to raising the number of votes savings accountholders receive from 400 to 1,000 as this could give large accountholders undue influence, but another group of commenters felt that an increase to 1,000 votes would provide better representation of owner interests. There were no comments received concerning deletions to the preapproved charter amendments, or to the simplified amendment procedures.

c. Board's Response

Although the Board intends to implement the provision authorizing savings, demand, or other authorized accounts as the only voting members of a mutual association which adopts the new charter, existing borrower-members must be grandfathered for those associations adopting the new charter. With respect to the retention of separate charters for tax purposes, the Board believes that inclusion of the words "savings bank" in the corporate title, section 1 of the charter, and the additional sentence required at the end of section 4 for every savings bank, will suffice to preserve the separate character of a savings bank for tax purposes.

In response to commenter opposition regarding the proposed requirement of an odd number of directors or trustees on a mutual board, the Board is revising the final charter to allow the association to determine the composition of its board. The Board strongly recommends boards to avoid deadlocks by requiring an odd number of directors or trustees on the board but will leave that determination to the business judgment of the affected association. With regard to mergers where boards would contain more than 15 members, the Board agrees with the commenter who suggests attrition as an answer to large boards of directors or trustees. The Board has left itself latitude to approve a greater number of directors or trustees if necessary. In addition to extending this authority to the Supervisory Agents, as discussed below, the Board has also revised § 571.5(c) of the Insurance Regulations to reflect its thinking in this area.

While no public comments were made with regard to the simplified amendment process, the Board has ascertained that there could be some confusion as to the amendment process for existing mutual associations. Accordingly, the Board has made several changes to the proposed § 544.2(a) which indicates amendments to the new federal mutual charter become effective when filed with the Board. That section will now require the filing to be made with the Supervisory Agent, to expedite the process. In addition § 544.2(a) has been amended to allow federal associations amending existing federal charters to follow the same filing procedure. This revision will make the amendment procedure for all types of federal mutual charters essentially equivalent. The Board has also added procedural language at new § 544.2(c) which instructs associations as to the procedures to follow should they desire reissuance of their charters in order to have a completely up-to-date signed charter.

Finally, the Board has determined that the danger of large accountholders achieving undue influence over a mutual association is remote since they have a limited number of votes no matter how large their deposits, and raising the maximum number of votes to 1,000 would more clearly represent both the amount of insurable deposits and be a more accurate representation of owner interests.

2. Federal Stock Savings and Loan Associations and Stock Savings Banks

a. Proposed Amendments

The proposal retained the basic format of the charters for federal stock savings and loan associations (Charter S) and federal stock savings (Charter T) as they have been set out in § 552.3 of the Federal Regulations. The term "institution" would have been substituted for the terms "association" and "savings bank." The wording of the first four sections was simplified.

Section 5, which governs the issuance of stock, was proposed to be revised to delete the requirement of shareholder approval of any supplemental issuance of stock in an amount exceeding 15 percent of the shares then outstanding. The 15-percent limitation would still have been available to federal associations as a preapproved charter amendment under Federal Regulation 552.4. In connection with this proposal, the Board requested comment on other corporate transactions for which shareholder approval would be appropriate. The Board also proposed to qualify the provision of Section 5, authorizing the use of non-cash consideration for stock, to be consistent with the authority available under the HOLA.

It was proposed that Section 7 of Charter S, which establishes the terms of the liquidation account required of associations converting to stock charters from the mutual form, be relocated to the Conversion Regulations, Part 563b. Proposed revisions to Section 8 included the requirement of an odd number of directors and the imposition of a maximum of 15 on the permissible number of directors.

The Board proposed several revisions to Section 9 to expedite amendment procedures. The thrust of the changes was to dispense with the requirement of a final review of charter amendments in favor of a system which required only a filing with the Secretary to the Board in order for a preliminarily approved amendment to become effective. Accordingly, a federal stock association could adopt a preapproved amendment without the necessity of any staff review.

Proposed changes to the preapproved charter amendments available under §552.4 included the addition of a preapproved amendment for redesignation of the association's have office and extensive changes to the provisions of optional charter Section 5 governing the terms on which perferred stock may be issued. The preferred-stock revisions involved an expansion of the circumstances in which preferred shareholders may vote as a class to include voting on major corporate transactions and in the event of a default on dividends. In addition, the revised optional Section 5 would consolidate the authorities to issue preferred shares in classes on in series. Finally, the Board requested comments on whether § 552.4 should contain more specific guidance on what anti-takeover charter provisions are permissible.

b. Comments

Commenters generally supported the Board's effort to modernize and streamline the regulations relating to the charters of federal stock associations. Particularly lauded were expansion of voting rights for preferred shares and the deletion of the requirement of shareholder approval for the issuance of stock in an amount greater than 15 percent of the shares then outstanding. No commenters recommended additional corporate transactions which might be made subject to shareholder approval. Although no commenters

addressed the proposed requirement of an odd number of directors in the context of stock charters, the Board is mindful of the comments generated in response to the similar change proposed for mutual charters. One commenter, a mutual savings bank considering conversion to federal stock charter, opined that the new maximum of 15 directors may pose a hardship for institutions like itself, whose boards of directors have not been subject to caps. Another institution noted that authority for an expanded board of directors may be desirable in order to integrate a board of directors from a disappearing association in a merger. Only three commenters offered views on whether the Board should provide more detailed guidance on what types of anti-takeover charter provisions are permitted. Two of these favored the current system of allowing any provision that can be justified under state law. The third commenter advocated a total federalization of the issue with no reference to state law. Finally, in connection with procedures for charter amendments, one commenter noted that there is curently some confusion over the procedure by which a federal stock saving and loan association may adopt the charter of a federal stock savings bank. Section 544.3 of the Federal Regulations, as amended by Board Resolution No. 82–791, dated December 22, 1982, 47 FR 56985 (1982), appears to require only that the association send notice to the Supervisory Agent after the savings bank charter has been adopted. What is not clear is whether this provision is meant to serve as the Board's preapproval of the amendment required by Section 9 of Charter S.

c. Board's Response

With respect to the comments raised regarding the proposed 15-member maximum for boards of directors, it is still the Board's view that large boards of directors become unwieldy and should be discouraged. It was the Board's intent that exceptional cases be accommodated under the proviso "except when a greater number is approved by the Board." The Board recognizes, however, that in order to obtain this approval some mergers which otherwise could be approved by the Supervisory Agent pursuant to the authority delegated in § 546.2 of the Federal Regulations will have to be referred to the Board itself. Accordingly, the Board is revising § 546.2 to provide the Supervisory Agent with authority to approve expanded boards of directors as long as the resulting association furnishes an acceptable plan for bringing its Board into compliance with the 15-member maximum. With respect to the problem of converting FDIC-insured mutual savings banks, conversion applications must come to Washington to be approved by the Board or its delegates. The Board expects that such institutions will be given a reasonable amount of time to comply with the requirements of the federal charter and is amending § 563b.8(w)(2) to provide the Board's General Counsel with appropriate delegated authority.

The response to the request for comments on anti-takeover authority indicates that federal associations are not uncomfortable with the idea of using state law as a reference point. Although the Board's Staff is continuing to study the issue, the Board does not propose to adopt a different system at this time. The Board does not view this policy as an abandonment of its primacy over the operations of federal associations but rather as the federalization of state rules. The use of homestate corporate law as a referent allows federal associations to take advantage of rapidly evolving state law. The Board, however, retains full authority to independently judge the merits of proposed anti-takeover provisions.

The Board is amending Federal Regulation §552.4 to specifically address the requirements for anti-takeover provisions. Although the amendment basically tracks the wording used in § 563b.3(i)(7) of the Conversion Regulations, the placement of this provision in § 552.4 will avoid questions of whether there are differences between the authorities of existing and converting associations in the adoption of anti-takeover provisions.

The Board is amending § 552.4(b) to provide an additional preapproval for the amendment of the charter of a federal stock savings and loan association to that of a federal stock savings bank upon compliance with the requirements of § 554.3, in order to address the point raised by the commenter.

The Board has additionally determined to make several other changes in the final version of the proposed regulation. Under Section 8 of the new Federal stock charter, amendments become effective upon filing with the Board. Proposed § 552.4(a) specified that this filing must be made with the Secretary to the Board. In order to make more effective use of available staff and to bring the amendment process closer to institutions, the Board has altered § 552.4(a) to mandate that the filing be made with the Supervisory Agent. The Board is also amending § 552.4(a) to provide that filing copies of the amendment and supporting affidavits in accordance with the procedure outlined in § 552.4(a) will constitute final approval of charter amendments for those associations that retain the Charter S or the Charter T. This revision will make the amendment procedures for either type of stock charter essentially equivalent.

The Board also has determined to alter the provisions of the preapproved amendment set forth in § 552.4(b)(6). As proposed, this preapproved amendment would have allowed Federal stock associations to incorporate into their charters the requirement of shareholder approval for any of the following: (1) The issuance of shares of common stock exceeding 15 percent of the total number of common shares outstanding; (2) the authorization of a new class or series of preferred stock; (3) the issuance of preferred stock which accounts for 15 percent of any class of preferred outstanding, and/or the total voting rights in the association. This preapproved amendment would allow federal stock associations to adopt the shareholder approval requirements previously found in the Charter S and Charter T but not carried into the new federal stock charter. The Board has decided instead to substitute a preapproved amendment which would require shareholder approval of any subsequent stock issuance only if shareholder approval would be required under the rules of either the New York or American Stock Exchanges for a similar issuance by a company whose shares were listed on those exchanges. Under current New York Stock Exchange Rules, shareholder approval is required for stock issuance in connection with the following transactions: (1) Any options or special remuneration plans granted to directors, officers, and employees; (2) transactions resulting in a change of control; (3) the acquisition, directly or indirectly, of a business, company, tangible or intangible assets or property or securities representing interests in the foregoing (a) from a director, officer or substantial security holder of the company or from any company or party in which one of the foregoing parties has an interest, (b) where the present or potential issuance of common stock or securities convertible into common could exceed 18.5 percent of the common outstanding, or (c) where the present or potential issuance of common stock and any other consideration has an aggregate fair value approximately 18.5 percent of the market value of the

outstanding common shares. *See* New York Stock Exchange Company Manual A15. The rules of the American Exchange require shareholder approval of: (1) The reservation of shares for options granted or to be granted to officers, directors, or key employees; (2) acquisitions of the stock or assets of another company through the issuance of common stock or securities convertible to common stock in the amount of 20 percent of the common outstanding or 5 percent of the common outstanding when the transaction involves a company in which an officer, director or substantial shareholder has a 5 percent interest; or (3) the sale or issuance of common stock or securities convertible into common stock at a price less than the greater of book or market value which together with any sales by officers, directors, or principal shareholders exceeds 20 percent of the currently outstanding common shares. American Stock Exchange Company Guide 711–13.

The Board is also adding a new paragraph (d) to § 552.4 to codify a procedure by which a federal association that has amended its charter may apply to the Board for a reissued charter incorporating the amendment. This procedure is not necessary for an amendment to be effective but merely provides a means by which federal stock associations may obtain complete copies of their charters in their most current form.

In all other respects, the Board is adopting the regulation as proposed, except for the use of the term "association" rather than "institution" to refer to federally chartered savings and loans and savings banks.

3. Effect on Existing Charters

No comments were received on proposed §§ 544.6 and 552.16, which specify that the legality of any transaction undertaken by an institution shall be judged by the bylaws and charter then in effect. Nor were comments offered on proposed § 543.14, which would provide regulatory confirmation of the continuity of corporate existence following the conversion or amendment of a federal charter. Accordingly, the Board adopts these provisions as proposed.

As noted in the preamble to the proposal, the Board is not requiring federal associations to adopt the new charters. Associations that have filed applications for new federal charters prior to the effective date of this resolution may, but are not required to, adopt the new form of charter. Such associations would include those converting to federal stock form pursuant to Part 563b, state associations converting to a federal charter, and federal savings and loan associations converting to federal savings bank form.

The Board, however, has reconsidered its position that institutions will be free to adopt such provisions of the new charters as they desire. This approach would tend to exacerbate the diversity of charters which has already become a problem. Consequently, an existing association that wishes to adopt any of the provisions of either of the new standard charters will be required to adopt all of its provisions. The Board recognizes that federal mutual associations not adopting the new charters will be precluded from adopting certain current preapproved charter amendments; however, the Board believes such associations have had ample time over the years to adopt these preapproved amendments and that sought after amendments would generally be those contained in the new charters.

B. BYLAWS

The Board's proposed revisions to the regulations regarding the bylaws of federal associations involve replacement of the current system of prescribed bylaws with regulatory guidelines incorporating the essential concepts of the current bylaws. The new system would not only free the Board's staff from review of every proposed deviation from prescribed bylaws but also would allow federal associations greater latitude in designing their internal rules of governance.

1. Federal Mutual Institutions

a. Proposed Revision

The Board's proposed to eliminate prescribed bylaws in favor of a mini-corporate code with examples appended to the regulation which could be used by associations as model bylaws. The proposal would have allowed adoption of bylaws in accordance with the proposed revision, whether or not a new charter were adopted.

Because the Board believes that certain requirements are necessary to ensure sound corporate governance, fairness to shareholders or accountholders, and conformity with applicable federal statutes, rules, and regulations, and the institution's charter, certain standards were proposed for the bylaws to be adopted by associations. The Board proposed to delete the existing bylaw language from its regulations by amending §§ 544.5, 554.5–1, 544.6, and 544.6–1 of the Federal Regulations. The proposal required that a copy of all bylaws and amendments thereto be filed with the Secretary to the Board.

Proposed § 544.5 included a number of requirements from the current prescribed and preapproved bylaws. These included requirements for annual and special meetings and notice for those meetings; the fixing of a record date (formerly found in the charter); voting by proxy; communications between members; the number of directors (or trustees); rules governing meetings of the board, officers, employees, and agents; resignation or removal of board members; powers of the board; execution of instruments; nominations; new business; seal; amending the bylaws; and provision for miscellaneous sections to the bylaws, such as age limitations, emergency preparedness, and other appropriate subjects for effective operation of the association. The proposal allowed federal associations to adopt the model bylaws or bylaws of their own design so long as their bylaws did not conflict with the regulations.

b. Comments and Response

Commenters were generally in favor of allowing associations to adopt their own bylaws. One commenter requested that the Board include a provision in the regulatory bylaws to determine, in the absence of the chairman, who will direct meetings of the board and also a provision to set out procedures in the event of disasters. Another commenter was concerned that the absence of a required federal bylaw on age limitations would suggest to state authorities that state law controlled this area.

The Board has determined to adopt the bylaw revisions substantially as proposed, with minor technical revisions. The final regulation includes a determination of who will direct meetings in the absence of a chairman. In lieu of setting out procedures in the event of disasters, the Board has determined to renumber present § 544.6–1 of the Federal Regulations to make it part of the appendix to the regulatory bylaws, in order to allow an association to consider that language as a model if it chooses to adopt a bylaw on this subject. Since the board wishes to avoid questions of federal or state preemption in the area of age discrimination, the regulatory bylaws, which already provide for age limitations for officers or directors, are reworded to require compliance with the Age Discrimination in Employment Act of 1967, as amended.

2. Federal Stock Institutions

a. Proposed Revisions

The Board essentially proposed to restate the substantive requirements of the currently prescribed bylaws. Although the Board sought to simplify and update these requirements in some respects, it was careful not to abridge the rights of shareholders or relieve management of its responsibilities to the institution.

Under the proposed new system of bylaw regulation, federal associations could adopt bylaws in any desired form as long as the bylaws did not conflict with the regulations. Provision was made for a set of model bylaws deemed to comply with the regulations. As provided in § 552.5(c), amendments to the bylaws would not need Board approval. Solely to maintain the Board's records, however, bylaws would be filed with the Supervisory Agent in accordance with the procedure outlined in § 552.4.

Proposed § 552.6 restates Article II of the current bylaws which defines the rights of shareholders. The salient aspects of this section include procedures for holding required and special meetings of shareholders, rules governing the availability of shareholder lists, proxy voting, cumulative voting, and the right of shareholders to nominate directors. Section 552.6–1 would incorporate the requirements of bylaw Article III regarding the essential constitution of the board of directors; § 552.6–1 would establish the structure of the Board and its basic responsibility for the management of the association. Section 552.6–1 would also provide procedures for filling vacancies and, for the first time, procedures for removing directors. The powers of officers, currently addressed in Article V of the bylaws, would be contained in § 552.6–2. Section 552.6–3 would incorporate the requirements for stock certificates and transfers currently found in Article VII of the bylaws. Section 552.6–4 would require stock associations to identify their fiscal year in the bylaws and would continue to require an annual audit.

b. Comments and Response

Commenters generally did not address the specifics of the proposed bylaw regulation but did commend the concept. The one exception was the commenter who noted that there was no provision for establishing an age limitation for directors and officers as currently found in §552.6. This omission may invite controversy in states that have more restrictive statutes than the Age Discrimination in Employment Act of 1967, as amended. Accordingly, the Board has amended §§ 552.6–1 and 552.6–2 to authorize federal associations to impose age limitations on their officers and directors. The Board has deleted the requirement that Board approval of a nonconforming bylaw must be obtained prior to its adoption. Under the final regulation, Board approval may be obtained before or after adoption. Otherwise, the Board adopts §§ 552.6 through 552.6–4 substantially as proposed, except for technical revisions to the amendment procedure.

C. PROXIES

1. Proposed Revision

The Board proposed to revise the language of Part 569 of the Insurance Regulations regarding the holders of proxies for insured mutual institutions. That revision provided that any proxy with a term greater than 11 months, or solicited at the expense of the institution, would be required to run to the board of directors or trustees as a whole. The Board proposed to have proxies resolicited by August 31, 1983, but requested comments as to the proposed timing. In the proposal the Board suggested that management could easily come into compliance with the amendment by arranging for assignment of proxies to the Board.

2. Comments

Twelve comments were received regarding this aspect of the proposal. One commenter claimed it violated due process and equal protection, impaired existing contracts under state law, and destroyed vested rights. Two commenters felt there were less burdensome alternatives. Two commenters erroneously believed the Board was requiring an 11-month proxy and that was unnecessary, time-consuming, and expensive. Two commenters asked that the regulation indicate that proxies complying with the annual report requirements would remain valid. One commenter objected to the proxies running only to the board of directors as a whole. Another commenter suggested that a majority of the board of directors should have the ability to substitute or assign any person or committee to vote the proxies and that the regulation should validate assignments. Two commenters felt the proposed August 31, 1983, deadline for resolicitation was too short. Two commenters asked that things be left as they are, and two commenters addressed concern that the proposal would merely perpetuate boards of directors and that proxies, therefore, should run to the managing officer to retain a check-and-balance system in the institution.

3. Board's Response

The Board does not believe this proposal would violate due process and equal protection, impair existing contracts under state law, or destroy vested rights. It has long been established that the rights of mutual members and depositors are derived from federal law. *York* v. *Federal Home Loan Bank Board*, 624 F. 2d 495 (4th Cir. 1980); *Harr* v. *Federal Home Loan Bank Board*, 557 F. 2d 747 (10th Cir. 1977). In September 1971, the Board established the present regulations governing proxies and the rights of proxyholders when it invalidated (as of December 1, 1971) all outstanding proxies running to a corporation, partnership, or any person other than those persons now listed in Part 569 of the Insurance Regulations.

Under the proposal, mutual members would still be able to designate an individual of their choice on a proxy with a term of fewer than 11 months. For long-term proxies, the Board believes that assignments would be valid. Three of the four sample proxy forms provided in the U.S. League of Savings Associations Federal Guide already contain a provision allowing for assignment by the proxyholder, which the Board deems a permissible way for the vast majority of proxies to be brought into compliance with this regulation without the need for resolicitation.

With regard to the danger of boards of directors perpetuating themselves because of control of proxies, the Board believes it is far less a danger than the situations that have arisen in recent years where officers or directors holding all or a controlling block of proxies have been able to dominate actions of the board of directors and render powerless the majority of the board whose views were contrary to the individual controlling the proxy. The mere threat of a special meeting called by the holder of the controlling proxies to remove other board members in some cases has hindered day-to-day operations of mutual associations; has inhibited the majority from taking positive action to correct unsafe and unsound activities, thereby necessitating regulatory supervisory enforcement actions; and, in one case, where an internal proxy dispute resulted in the total inability of an association to continue operations, it was necessary for the Board to appoint a conservator in order for the association to resume operations.

Therefore, the Board has determined to amend the proxy regulations with the changes indicated below. The Board has examined the type of proxy used to comply with the Annual Report requirements of § 563.45. That proxy allows a majority of the board of directors to designate a proxy committee to vote the proxies. The Board has determined that a relaxing of the proposed restriction in order to allow a majority of the board of directors to designate such a proxy committee would be desirable and would serve to validate those proxies already in compliance with the annual report requirements. In order to facilitate associations' compliance with these new requirements, the Board has determined to extend the deadline to December 31, 1985. This extension will allow associations not now in compliance to solicit new proxies in the course of their ordinary business operations. The Board urges associations to begin this process as soon as possible, so as to avoid costly mailings at the end of 1985. Institutions are advised that the Board does not contemplate granting any extensions of time for compliance with this provision. It is noted that, under the regulation adopted today, a board of directors henceforth may not assign proxies to anyone other than the board as a whole or a proxy committee.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons and objectives, for final rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Issues raised by public comments in response to initial regulatory flexibility analysis.* No issues relating to the initial regulatory flexibility analysis were raised by commenters.

3. *Alternatives to the final rules.* To the extent that any association determines to adopt a new charter or amend its bylaws, the proposed regulation would benefit its operations. Increased flexibility as well as increased powers for federal institutions would result from this regulation. The final regulation would not have a disproportionate impact on small institutions.

Since the Board finds that the regulation generally relieves restrictions and that immediate implementation would facilitate the processing of applications, the Board determines that the 30-day delayed effective date required by 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary. For the first 30 days following the effective date of the regulation, however, a federal association that conducts its operations in accordance with the Board's regulations as they existed prior to September 15, 1983 will be deemed to be in compliance with the Board's rules as amended by this resolution. This transition period will afford institutions an opportunity to familiarize themselves with the new rules.

List of Subjects in 12 CFR Parts 543, 544, 546, 552, 563b, 569, and 571

Savings and loan associations; Savings banks.

Accordingly, the Board hereby amends Parts 543, 544, 546, and 552 of Subchapter C, and Parts 563b, 569, and 571 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

§ 543.1 [Amended]

1. Amend § 543.1 by removing the first two sectional references and inserting in lieu thereof "§ 544.2(b)(1)".

2. Amend § 543.2 by adding a sentence after the third sentence of paragraph (b) thereof, as follows:

§ 543.2 Application for permission to organize.

* * * * *

(b) *Form; supporting information.** * * The applicants shall provide a copy of the proposed charter and bylaws including any preapproved charter provisions specifically requested.* * *

3. Revise § 543.5, as follows:

§ 543.5 Issuance of charter.

Board approval of the organization of a Federal mutual association or the conversion of an insured association to Federal mutual form shall constitute issuance of a charter and shall be final, provided that the association complies with the procedures set out at § 544.2(a) of this subchapter. The charter shall conform with the requirements of § 544.1 of this subchapter, the permissible provisions of § 544.2, or other provisions specifically approved by the Board.

§ 543.11 [Amended]

4. Amend § 543.11(a) by inserting the parenthetical phrase "(who may also be known as a board of directors)" after the word "trustees", and by removing the phrase "issued pursuant to § 544.2-2" and inserting in lieu thereof the phrase "approved by the Board pursuant to § 544.1 of this subchapter."

5. Add a new § 543.14, as follows:

§ 543.14 Continuity of existence.

The corporate existence of an association converting under this Part or under § 544.3 of this subchapter shall continue in its successor. Each savings or demand accountholder shall receive a savings account or accounts in the converted association equal in amount to the value of accounts held in the former association.

PART 544—CHARTER AND BYLAWS

6. Revise § 544.1, as follows:

§ 544.1 Federal mutual charter.

When the Board approves an Application for Permission to Organize for a Federal mutual association that is a Federal savings and loan association or savings bank, or approves an Application for Conversion to a Federal savings and loan association or savings bank pursuant to §§ 543.8 and 543.9 of this subchapter or § 544.3 of this part, the association shall have a charter in the following form, or a form which includes any of the additional provisions set forth in § 544.2 of this part, if such provisions are specifically requested. A charter for a Federal mutual savings bank shall substitute the term "savings bank" for "association" and shall include the following sentence at the end of Section 4: "In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by action of the Board, including authorization by delegated authority, in connection with action approving the issuance of the charter."

Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal association hereby chartered is ————.

Section 2. Office. The home office shall be located at ————.

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and

orders of the Federal Home Loan Bank Board ("Board").

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Board.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. [Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the Board. Borrowers as of the date of this charter shall continue to have one vote for the period of time such borrowings are in existence.] No member, however, shall cast more than 1000 votes. Voting may be by proxy, which is subject to the rules and regulations of the Board. A majority of the outstanding voting shares, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. All accounts shall be nonassessable.

Section 7. Directors [Trustees]. The association shall be under the direction of a board of directors [trustees]. The authorized number of directors [trustees] shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors [trustees] may be increased to a number greater than fifteen with the prior approval of the Board or its delegate. Each director [trustee] of the association shall be a member of the association. Members of the association shall elect directors [trustees] by ballot: *Provided*, that in the event of a vacancy on the board, the board of diretors [trustees] may fill such vacancy, if the members of the association fail to do so, by electing a director [trustee] to serve until the next annual meeting of the members. Directors [trustees] shall be elected for periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year.

[State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of trustees [directors] so long as such provisions (i) are authorized by the Board, including authorization pursuant to delegated authority, and (ii) provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal association.]

Section 8. Reserves, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of general reserves that the Board requires by regulation; such reserves shall include the reserve required for insurance of accounts. Any losses may be charged against general reserves. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board: *Provided*, that the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the association shall be entitled to equal distribution of assets, *pro rata* to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment pursuant to sections 544.2 or 544.3 of the Board's regulations shall be effective upon filing the amendment with the Board in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, alteration, change, or repeal of this charter must be submitted to and preliminarily approved by the Board prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the Board in accordance with regulatory procedures.

Attest: _____
Secretary of the Association
By: _____
President or Chief Executive Officer of the Association
Attest: _____
Secretary to the Board
Federal Home Loan Bank Board.
By: _____

* * * * *

7. Revise § 544.2 as follows:

§ 544.2 Charter amendments.

(a) Whenever a Federal mutual association, whose charter specifies that amendments shall be effective upon filing, completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and three conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the Supervisory Agent who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Board for purposes of determining the effectiveness of the amendment. An association whose charter requires final approval by the Board of all charter amendments shall be deemed to have obtained such final approval by filing a copy of the properly adopted amendment with the Supervisory Agent in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Board of any of the following amendments to the charter of a Federal mutual association, including the adoption of the Federal mutual charter as set forth in § 544.1 of this part: *Provided*, that the association follows the requirements of its charter in adopting the amendments.

(1) *Purpose and powers.* Add a second paragraph to Section 4, as follows:

Section 4. Purpose and powers. * * *

The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by regulations made by the Board, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the Board; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) *Title change.* A Federal mutual association that has complied with § 543.1(b) of this subchapter may amend

its charter by substituting a new corporate title in Section 1.

(3) *Home office.* A Federal mutual association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in Section 2.

(4) *Mutual capital certificates.* Renumber existing Section 9 as Section 10, add new Section 9 to read as set forth below, and add an additional provision to renumbered Section 10 as provided below:

Section 9. Mutual capital certificates. The association may issue mutual capital certificates pursuant to the rules and regulations of the Board. Subject to such rules and regulations and without the prior approval of the members, the board of directors [trustees] of the association is authorized, by resolution(s) from time to time adopted by it, to provide in supplementary sections hereto for the issuance of mutual capital certificates and to fix and state the voting powers, designations, preferences, and the relative participating, optional, or other special rights of the certificates and the qualifications, limitations, and restrictions thereon.

Members of the association shall not be entitled to preemptive rights with respect to the issuance of mutual capital certificates nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issues of mutual capital certificates.

Section 10. Amendment of charter. * * *

Additional provisions may be added to the section to grant holders of mutual capital certificates the right to vote on amendments, additions, alterations, changes, or repeal of this charter in any of the instances set forth in § 563.7–4 of the Board's regulations.

(c) *Reissuance of charter.* A Federal mutual association that has amended its charter may apply to have its charter, including the amendments, reissued by the Board by filing ten amended copies, with the signatures required under § 544.1 of this part, with the Board's Office of District Banks, and such supporting documents as may be needed to demonstrate that the amendments were properly adopted. The Board delegates to the General Counsel authority to sign on its behalf charters submitted for reissuance pursuant to this paragraph.

§ 544.2–1 [Removed]

8. Remove § 544.2–1.

§ 544.2–2 [Removed]

9. Remove § 544.2–2.

10. Revise § 544.4, as follows:

§ 544.4 Issuance of charter.

Issuance by the Board of a charter to a Federal mutual association within the meaning of § 543.5 of this subchapter constitutes the incorporation of that association by the Board.

11. Revise § 544.5, as follows:

§ 544.5 Federal mutual association bylaws.

(a) A Federal mutual association shall operate under bylaws that contain provisions which comply with all requirements specified by the Board in this section and which are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations. Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this Part shall be deemed to comply with the requirements of this section. A copy of all bylaws and amendments thereto shall be filed with the Supervisory Agent in accordance with the procedure for filing amendments to charters set out at § 544.2 of this part and shall include an opinion by the association's counsel that said bylaws or amendments thereto comply with all applicable laws, rules, and regulations.

(b) The following requirements are applicable to Federal mutual associations:

1. *Annual meetings of members.* An association shall provide for and conduct an annual meeting of its members for the election of directors [trustees] and at which any other business of the association may be conducted. Such meeting shall be held, as designated by its board of directors [trustees], at a location within the state that constitutes the principal place of business of the association and at a date and time within 120 days after the end of the association's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

2. *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors [trustees] of the association or the holders of 10 percent or more of the voting rights shall be entitled to call a special meeting.

3. *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the association. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice.

4. *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken.

5. *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Board, including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

6. *Communications between members.* Provisions relating to communications between members shall be consistent with § 545.131 of the Board's regulations.

7. *Number of directors [trustees].* The number of directors [trustees] shall not be fewer than five nor more than fifteen, except where authorized by the Board.

8. *Meetings of the board.* The board of directors [trustees] shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors [trustees], and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board.

9. *Officers, employees, and agents.* The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected annually by the board of directors [trustees]. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors [trustees] or chosen in such other manner as may be prescribed in the bylaws. Any two or

more offices may be held by the same person, except the offices of president and secretary.

All officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors [trustees] not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices.

Any indemnification provision must provide that any indemnification is subject to applicable federal law, rules, and regulations.

10. *Resignation or removal of directors [trustee].* The bylaws shall set out the procedure for the resignation of a director [trustee], which shall be by written notice or by any other procedure established in the bylaws. Directors [trustees] may only be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

11. *Powers of the board.* The board of directors [trustees] shall have the power,

(a) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(b) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without cause;

(c) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

12. *Execution of instruments, generally.* The board shall establish procedures for the execution, verification, acknowledgment, and delivery of instruments or writings of any nature.

13. *Nominations for directors [trustees].* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

14. *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

15. *Seal.* The association may have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

16. *Amendment.* Bylaws may include any provision for their amendment pursuant to § 544.5 of the Board's regulations, as long as any such amendment would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose. Amendments shall be effective upon filing with the Board in accordance with regulatory procedures after approval by a two-thirds affirmative vote of the entire board, or by a vote of the members of the association.

17. *Miscellaneous.* The bylaws may also address the subjects of age limitations for directors or officers as long as consistent with applicable federal law, rules, or regulations, emergency preparedness, and any other subjects necessary or appropriate for effective operation of the association.

12. Add an appendix at the end of Part 544 as follows:

Appendix—Model Bylaws for Mutual Associations

1. *Annual meeting of members.* The annual meeting of the members of the association for the election of directors [trustees] and for the transaction of any other business of the association shall be held, as designated by the board of directors [trustees], at a location within the state that constitutes the principal place of business of the association at [insert date and time within 120 days after the end of the association's fiscal year], if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other times on such day or at such other place in the same state as the board of directors [trustees] may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

2. *Special meetings of members.* Special meetings of the members of the association may be called at any time by the president or the board of directors [trustees] and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the capital of the association. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the association addressed to the president. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

3. *Notice of meeting of members.*

(a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least [insert number not less than 15] days and not more than [insert number not more than 45] days prior to the date on which such annual meeting shall convene, to each of its members of record at the last address appearing on the books of the association. Such notice shall state the name of the association, the place of the annual meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least [insert number not less than 15] days and not more than [insert number not more than 45] days prior to the date on which such special meeting shall convene to each of its members of record at the member's last address appearing on the books of the association. Such notice shall state the name of the association, the purpose(s) for which the meeting is called, the place of the special meeting and the date and time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any special meeting of members, notice thereof need not be given to such member.

4. *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors [trustees] shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the association on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting.

5. *Voting by proxy.* Voting at any annual or special meeting of the members may be by proxy pursuant tb the rules and regulations of the Board, provided, that no proxies shall be voted at any meeting unless such proxies

shall have been placed on file with the secretary of the association, for verification, prior to the convening of such meeting. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

6. *Communication between members.* Communication between members shall be subject to any applicable rules or regulations of the Board.

7. *Number of directors [trustees].* The number of directors [trustees] of the association shall be ———.

8. *Meetings of the board.* The board of directors [trustees] shall meet regularly without notice at the principal place of business of the association at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors [trustees]. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors [trustees]. All special meetings shall be held upon at least three days' written notice to each director [trustee] unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

9. *Officers, employees, and agents.* Annually at the meeting of the board of directors [trustees] of the association next following the annual meeting of the members of the association, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer: *Provided,* that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices.

Any indemnification by the association of the association's personnel is subject to any applicable rules or regulations of the Board.

10. *Resignation or removal of directors [trustees].* Any director [trustee] may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board.

At a meeting of members called expressly for that purpose, directors [trustees] or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

11. *Powers of the board.* The board of directors [trustees] shall have the power:

(a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof;

(c) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for an account or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

12. *Execution of instruments, generally.* All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledge, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositaries shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by, or standing in the name of, the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other persons so authorized by the board.

13. *Nominating committee.* The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors [trustees] in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting. Provided such committee is appointed and makes such nominations, no nominations for directors [trustees] except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors [trustees] may be made at the annual meeting by any member and shall be voted upon.

14. *New business.* Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors [trustees] of the association, shall be stated in writing and filed with the secretary of the association at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

15. *Seal.* The seal shall be two concentric circles between which shall be the name of the association. The year of incorporation, the word "incorporated," or an emblem may appear in the center.

16. *Amendment.* Adoption of any bylaw amendment pursuant to § 544.5 of the Board's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated bylaw section, shall be effective upon filing with the Board in accordance with the regulatory procedures after such amendment has been approved by a two-thirds affirmative vote of the entire

board, or by a vote of the members of the association.

17. *Age limitations.*

(a) *Directors [trustees].* No person (fill in any age, 70 or above) years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the association. No director [trustee] shall serve as such beyond the annual meeting of the association immediately following the director [trustee] becoming (fill in age used above), except that a director [trustee] serving on (fill in bylaw adoption date) may complete the term as director [trustee]. This age limitation does not apply to an advisory director [trustee].

(b) *Officers.* No person (fill in any age, 70 or above) years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming (fill in age used above), except that an officer serving on (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age — if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least —— (must be in accordance with ERISA).

§ 544.5–1 [Amended]

13. Remove § 544.5–1.

§ 544.6–1 [Redesignated as Section 18 of the Appendix]

14. Redesignate § 544.6–1 as Section 18. of the Appendix to Part 544 and revise by eliminating the introductory paragraph and revising the heading as follows:

18. *Preparedness emergency bylaws.*

* * * * *

15. Revise § 544.6, as follows:

§ 544.6 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

§ 546.2 [Amended]

16. Amend § 546.2 by inserting before the period at the end of paragraph (d)(4) the following:

* * * * *

(d) * * *

(4) * * * and may approve a temporary increase in the number of directors of the resulting association provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 544.1 or § 552.3 of the Subchapter within a reasonable period of time.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS.

17. Amend § 552.1 by amending the introductory text, removing paragraph (d), and revising paragraphs (a) and (b), as follows:

§ 552.1 Definitions.

As used in this part, the following terms shall have the indicated meanings.

(a) *Federal stock association.* The term "Federal stock association" means a Federal savings and loan association or Federal savings bank which has been issued a charter in the form prescribed in § 552.3 of this part, or such other form as authorized by the Board.

(b) *Federal stock charter.* A charter of a Federal stock association in the form specified in § 552.3 or its predecessors, or permitted by § 552.4 of this part, or other action of the Board.

* * * * *

18. Amend § 552.2–1, as follows:

§ 552.2–1 Procedure for organization of a Federal stock association.

* * * * *

(c) *Issuance of charter.* Upon approval of an application, the Board shall issue to the association a charter for a Federal stock savings and loan association or for a Federal stock savings bank, as requested by the applicants, which shall be in the form provided in this Part. Issuance of the charter shall be subject to the condition subsequent that the organization of the association is completed pursuant to this section.

* * * * *

(g) *Organizational meeting.* Promptly upon the completion of the sale of its capital stock, the association shall provide notice, pursuant to § 552.6(b), of a meeting of its stockholders to elect a board of directors. Immediately following such election, the directors shall meet to elect the officers of the association and to undertake any other action necessary under the charter or bylaws to complete corporate organization.

* * * * *

19. Amend the title of § 552.2–5, as follows:

§ 552.2–5 Conversion from Federal mutual to Federal stock charter.

* * * * *

20. Revise § 552.3 as follows:

§ 552.3 Charters for Federal stock associations.

(a) The charter of a Federal stock association shall be in the following form, except that an association that has converted from the mutual form pursuant to Part 563b of this chapter shall include in its charter a section establishing a liquidation account as required by § 563b.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term "savings bank" for "association" and shall include the following sentence at the end of Section 4: "In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by action of the Board, including authorization by delegated authority, in connection with action approving the issuance of the charter." Charters may also include any preapproved optional provision contained in § 552.4 of this part.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is ————.

Section 2. Office. The home office shall be located in ————.

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Home Loan Bank Board ("Board").

Section 5. Capital stock. The total number of shares of all classes of the capital stock which the association has the authority to issue is ————, all of which shall be common stock of par [or stated] value of ———— per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property,

labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of common stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than seven nor more than fifteen except when a greater number is approved by the Board.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is first proposed by the board of directors of the association, then preliminarily approved by the Board, which preliminary approval may be granted by the Board pursuant to regulations specifying preapproved charter amendments, and thereafter approved by the shareholders by a majority of the total votes eligible to be cast at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon shall be effective upon filing with the Board in accordance with regulatory procedures or on such other date as the Board may specify in its preliminary approval.

Attest: _____
Secretary of the Association
By: _____
President or Chief Executive Officer of the Association
Attest: _____
Secretary to the Board
Federal Home Loan Bank Board
By: _____

21. Revise § 552.4 as follows:

§ 552.4 Charter amendments.

(a) Whenever a Federal stock association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and three conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the Supervisory Agent who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Board for purposes of determining the effectiveness of the amendment. A Federal stock association whose charter provides that any amendment shall be effective on the date it receives final approval of the Board shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment with the Supervisory Agent in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Board of the proposal to shareholders by the board of directors of any Federal stock association of the following amendments to such association's charter, including the adoption of the Federal stock charter as set forth in § 552.3 of this Part: *Provided,* That the association follows the requirements of its charter in adopting the amendments.

(1) A Federal stock association that has complied with § 543.1(b) of this subchapter may amend its charter by substituting a new corporate title in Section 1.

(2) A Federal stock association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in Section 2.

(3) A Federal stock savings and loan association may amend its charter to read in the form of a Federal stock savings bank charter or a Federal stock savings bank may amend its charter to read in the form of a Federal stock savings and loan association charter: *Provided,* That such association complies with the requirements of § 544.3 of this subchapter.

(4) Amend Section 5 of the charter of a Federal stock association to change the number of authorized shares and its number of shares within each class of shares and the par or stated value of such shares.

(5) Amend the charter of a Federal stock association by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of the capital stock which the association has the authority to issue is ———, of which———shall be common stock of par [or stated] value of ———per share and of which [list the number of each class of preferred and the par or stated value per share of each such class.] The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors: *Provided,* That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment

of dividends on any class or series of preferred stock;

(ii) To any provision which would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided*, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Federal Savings and Loan Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common Stock*. Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred Stock*. The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s) the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the Secretary to the Board a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(6) Amend the charter of a Federal stock association to require shareholder approval of the issuance of reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were than listed on the New York or American Stock Exchanges.

(7) Amend the charter of a Federal stock association by renumbering existing sections as appropriate and adding a new Section 6 as follows: Where appropriate, a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation shall substitute that Agency for the Federal Savings and Loan Insurance Corporation.

Section 6. Net worth certificates. Notwithstanding any provision of Section 5, *Capital Stock*, the association may issue net worth certificates to the Federal Savings and Loan Insurance Corporation (the "Corporation") in exchange for appropriate consideration, including promissory notes of the Corporation, in accordance with the rules, regulations, and policies of the Board. Subject to such rules, regulations, and policies, the board of directors of the association is authorized without the prior approval of the stockholders of the association and by resolution(s) from time to time adopted by the board of directors to cause the issuance of net worth certificates to the Corporation and to fix the designations, preferences, and relative, participating, optional, or other special rights of the certificates, and the qualifications, limitations, and restrictions thereon. Stockholders of the association [or bank] shall not be entitled to preemptive rights with respect to the issuance of net worth certificates nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issuance of net worth certificates.

(c) *Anti-takeover provisions.* The Board may grant preliminary approval to a charter amendment regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for preliminary approval an opinion, acceptable to the Board, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located.

(d) *Reissuance of charter.* A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the Board by filing 10 amended copies with the signatures required under § 552.3 of this part with the Board's Office of District Banks, and such supporting documents as needed to demonstrate that the amendments were

properly adopted. The Board delegates to the General Counsel or his designee authority to execute on its behalf charters submitted for reissuance pursuant to this paragraph (d).

22. Revise § 552.5 as follows:

§ 552.5 Bylaws.

(a) At its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 552.6 through 552.6–4 of this part and shall not contain any provision which is inconsistent with those sections or with applicable laws, rules, regulations, or the charter, except that a bylaw inconsistent with §§ 552.6 through 552.6–4 may be adopted with approval of the Board or its designee.

(b) Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this part shall be deemed to comply with the requirements of this section.

(c) A copy of all bylaws and amendments thereto shall be filed with the Supervisory Agent.

23. Revise § 552.6 as follows:

§ 552.6 Shareholders.

(a) *Shareholder meetings.* An annual meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year. Special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the association has its principal place of business.

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(c) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.* (1) At least 10 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours, for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in the paragraph (d)(1), the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(e) *Shareholder quorum.* A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(f) *Shareholder voting*—(1) *proxies.* At all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) *Shares controlled by association.* Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(3) *Cumulative voting.* Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

(g) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual

meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

24. Add new §§ 552.6–1, 552.6–2, 552.6–3, and 552.6–4 as follows:

§ 552.6–1 Board of directors.

(a) *General powers and duties.* The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting.

(b) *Number and term.* The board of directors shall consist of not fewer than seven nor more than fifteen as prescribed in the bylaws. The directors shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

(c) *Regular meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders.

(d) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board.

(e) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(f) *Removal of directors.* (1) At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a meeting.

(i) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any institutional matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to director who voted in favor of such action.

(k) *Age limitation on directors.* A federal stock association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. The bylaws may also provide that no director shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 552.6–2 Officers.

(a) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board or directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board or directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall conform with § 545.122 of this subchapter.

(c) *Age limitation on officers.* A federal stock association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment or reappointment as an officer of the association. The bylaws may also provide that no officer shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 552.6–3 Certificates for shares and their transfer.

(a) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Board. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(b) *Transfer of shares.* Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

§ 552.6–4 Fiscal year; annual audit.

The bylaws of a Federal stock association shall specify the fiscal year for the association. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

§§ 552.7, 552.8, 552.9, 552.10, 552.11, 552.13, 552.14, and 552.15 [Amended]

25. Amend §§ 552.7, 552.8, 552.9, 552.10, 552.11, 552.13, 552.14, and 552.15, by substituting the phrase "Federal stock association" for the phrase "Charter S association" wherever it appears.

§ 552.12 [Removed]

26. Remove § 552.12.

27. Add a new § 552.16 as follows:

§ 552.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

28. Add an appendix at the end of Part 552 as follows:

Appendix—Model Bylaws for Stock Associations

Article I—Home Office

The home office of the association shall be at ———— in the County of ————, in the State of ————.

Article II—Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the association or at such other place in the State in which the principal place of business of the association is located as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year on the —— of ——— if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at ———, or at such other date and time within such 120-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Federal Home Loan Bank Board ("Board") (which as hereinafter used includes the Federal Savings and Loan Insurance Corporation), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the association entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in Section 5 of this Article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 20 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting

of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournment, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 552.6(d) of the Board's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall consititute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholdes to constitute less than a quorum.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the shareholders of the association any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in detemining the total number of outstanding shares at any given time for purposes of any meeting.

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distrubuting such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any persons other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president.

Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal action by shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting

of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. General Powers. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of —— members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, within the association's normal lending territory, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors, may fix any place, within the association's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons.

Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person but shall not constitute attendance for the purpose of compensation pursuant to Section 11 of this Article.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least two days prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed or when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by Section 5 of this Article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vancancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for actual attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for actual attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless he shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less then the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this selection shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV—Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association, or recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of Section 8 of this Article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the

executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need by given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action without a meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the association and may prescribe the duties, constitution, and procedures thereof.

Article V—Officers

Section 1. Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with Section 3 of this Article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI—Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in any duly authorized depositories as the board of directors may select.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Board. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and cancelled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his legal representative, who shall furnish proper evidence of such authority, or by his attorney authorized by a duly executed power of attorney and filed with the association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

Article VIII—Fiscal Year; Annual Audit

The fiscal year of the association shall end on the _____ of _____ of each year. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

Article IX—Dividends

Subject to the terms of the association's charter and the regulations and orders of the

Board, the board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

Article X—Corporate Seal

The board of directors shall provide an association seal which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article XI—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board at any time by a two-thirds vote of the full board of directors or by a majority vote of the votes cast by the stockholders of the association at any legal meeting.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

29. Amend § 563b.3 by adding the following at the end of paragraph (c)(13):

§ 563b.3 General principles for conversions.

* * * * *

(c) *Required provisions in the plan or conversion.*

(13) * * * An association converting to a Federally chartered stock savings and loan association or savings bank shall include in its charter the following section:

Liquidation account. Pursuant to the requirements of Board's regulations (12 CFR Subchapter D) the association shall establish and maintain a liquidation account for the benefit of its savings accountholders as of _____ ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the association's eligible savers' inchoate interest in the liquidation account, to the extent it is still in existence: *Provided*, that an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

* * * * *

30. Amend § 563b.8 by revising clause (i) to paragraph (w)(2) to read as follows: "the authority to waive any material provision of this Subpart A pursuant to § 563b.1(a)"; and by adding the following sentence at the end of paragraph (w)(2):

§ 563b.8 Procedural requirements.

* * * * *

(w) *Delegation of authority.* * * *

(2) *Approval of applications for conversion.* * * * In connection with the approval of an application for conversion under this Subpart A, the Board also delegates to the General Counsel the authority to permit the converted insured association which previously had a greater number of directors than allowed under § 552.3 to retain that number of directors in accordance with the acceptable plan for complying with § 552.3 within three years after its next annual meeting.

* * * * *

PART 569—PROXIES

31. Amend § 569.3 by redesignating paragraphs (a) and (b) as new paragraphs (b) and (c)(1), respectively; removing the phrase "of an insured institution" from new paragraph (b)(2) and inserting in lieu thereof the phrase "or committee appointed by a majority of such board of an insured association"; and adding new paragraphs (a) and (c)(2), as follows:

§ 569.3 Holder of proxies.

(a) No proxy of an insured mutual association with a term greater than eleven months or solicited at the expense of the association may designate as holder anyone other than the board of directors [trustees] as a whole, or a committee appointed by a majority of such board.

* * * * *

(c) * * *

(2) Any proxy of an insured mutual association outstanding on [effective date of final regulation] and not in compliance with paragraph (a) of this section shall be valid until December 31, 1985.

PART 571—STATEMENTS OF POLICY

§ 571.5 [Amended]

32. Amend § 571.5(c)(1) by removing the phrase "within three years to not more than 25" and inserting in lieu thereof the phrase "to not more than 15, in accordance with an acceptable plan for complying with §§ 544.1 or 552.3, within three years after its next annual meeting."

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-26387 Filed 9-27-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8959]

RSR Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the matter in Docket 8959 and modifies the Commission's order issued on Dec. 2, 1976 (42 FR 4), *modified* Nov. 13, 1981 (46 FR 59532), to provide for the appointment of a trustee who shall effect divestiture of all assets (with certain specified exceptions) constituting the lead-recycling plants in Dallas, Tex. and Seattle, Wash. The order also renumbers Paragraphs V, VI, VIII, Paragraphs XVII, XVIII, AND XIX, respectively.

DATES: Final Order issued Dec. 2, 1976. Modifying Order issued Sept. 12, 1983.[1]

FOR FURTHER INFORMATION CONTACT: TFC/CC, Selig S. Merber, Washington, D.C. 20580. (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of RSR Corporation, a corporation. Codification appearing at 42 FR 4 remains unchanged.

List of Subjects in 16 CFR Part 13

Lead recycling plants, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

SUPPLEMENTARY INFORMATION:

Decision and Order Modifying Cease and Desist Order in Docket No. 8959

On December 2, 1976, the Federal Trade Commission, pursuant to Section 11 of the Clayton Act, issued the order in this case against RSR Corporation requiring, among other things, that RSR Corporation divest itself of certain assets. On November 16, 1981, the Commission modified its order to provide that the assets to be divested shall be RSR Corporation's Dallas, Texas, and Seattle, Washington, lead-recycling plants. These plants were to have been divested on or before November 16, 1982, to an acquirer or acquirers approved by the Commission. As of the date of this order, neither plant has been divested by RSR Corporation.

After full consideration of the record and of information provided to it by RSR Corporation and others, the Commission

[1] Copies of all Appendices and Exhibits filed with the original documents.

has determined that further modification of the order is in the public interest because, under the circumstances, it will provide an expeditious means of achieving the purpose of its order in this matter, namely, the restoration of competition in the secondary-lead market. The Commission believes that divestiture of the plants was not accomplished within the prescribed period largely because RSR Corporation failed to make a good-faith effort to achieve divestiture. The Commission further believes that entrusting the divestiture to a trustee will ensure that such an effort is made. Moreover, respondent has agreed to a proposed Final Judgment providing for payment of civil penalties in settlement of a complaint alleging that respondent failed to divest the Dallas and Seattle plants by November 16, 1982. The Commission has forwarded the complaint and proposed Final Judgment to the Department of Justice for filing. Accordingly, the Commission on this date has issued an order to show cause why (1) Paragraphs V, VI, and VIII of the order in Docket No. 8959 should not be modified to renumber those Paragraphs XVII, XVIII, and XIX respectively, and (2) why Paragraphs I, II, III, IV, and VII of the order in Docket No. 8959 should not be modified as set forth below. The proposed modification was accepted by respondent.

Accordingly

It is ordered, that this matter be, and it hereby is, reopened and that the order in Docket No. 8959 be modified: (1) To renumber Paragraphs V, VI, and VIII of the order in Docket No. 8959 Paragraphs XVII, XVIII, and XIX respectively, and (2) that Paragraphs I, II, III, IV, and VII of the order in Docket No. 8959 be modified as set forth below.

I

As used in this Modified Order:

A. "RSR" means RSR Corporation, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns.

B. "Assets of the Dallas Plant" means all assets, title, properties, interest, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, except as listed in Appendix A hereto, that comprise the Dallas, Texas, lead recycling plant owned by an RSR subsidiary.

C. "Assets of the Seattle Plant" means all assets, title, properties, interest, rights, and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, except as listed in Appendix A hereto, that comprise the Seattle, Washington, lead recycling plant owned by RSR subsidiaries.

D. "Assets" means the Assets of the Dallas Plant and the Assets of the Seattle Plant.

E. "Environmental Approval" means approval as to the acquirer in all respects from the Environmental Protection Agency and/or other appropriate governmental agency having jurisdiction over environmental matters, including the filing by the acquirer with the Environmental Protection Agency and/or other appropriate governmental agency having jurisdiction over environmental matters of a Part A application for a hazardous waste permit and the affirmative demonstration to such agencies by the acquirer that it meets the financial responsibility standards pursuant to applicable environmental laws, regulations, and administative practices.

F. "Commission Approval" means acquirer approval from the Federal Trade Commission.

G. "Approvals" means Environmental Approval and Commission Approval.

II

RSR shall divest the Assets in accordance with and subject to the terms and provisions of this Modified Order to an acquirer(s) approved in advance by the Federal Trade Commission. The Assets may be divested as a unit or the Assets of the Dallas Plant may be divested to one acquirer and the Assets of the Seattle Plant to another acquirer.

III

The Commission shall appoint a Trustee for the purpose of effecting divestiture(s) of the Assets in accordance with the provisions of this Modified Order to an acquirer(s) who represent(s) in good faith that the Assets will be used as plants engaged in the production of recycled bulk lead, lead alloys, and lead products. RSR will transfer to the Trustee, within one week of the Trustee's appointment all powers necessary to permit the Trustee to execute on behalf of RSR the deeds and assignments contained in Exhibit III annexed hereto and otherwise to divest the Assets as provided in this Modified Order. In connection with such divestiture, RSR shall be required to make no warranties other than warranties of title.

IV

The Trustee shall be empowered to find a prospective acquirer(s) for and, upon receipt of all Approvals, to sell, transfer, and convey the Assets to such acquirer(s) in accordance with this Modified Order (unless in either case, prior to the appointment of the Trustee hereunder, RSR shall have divested the Assets of the Dallas Plant or the Assets of the Seattle Plant). The Trustee shall hold such power in Trust for purposes of effecting divestiture(s) of the Assets, pursuant to and in accordance with the terms of this Modified Order. The Trustee shall find a single acquirer for the Assets of the Dallas Plant and a single acquirer for the Assets of the Seattle Plant, except that one acquirer may acquire both the Assets of the Dallas Plant and the Assets of the Seattle Plant. The Trustee shall attempt to find an acquirer(s) for the Assets as soon as possible and shall attempt to obtain the best possible price for the Assets, provided, however, the Trustee is not required to obtain a minimum price.

V

The Trustee shall allow a prospective acquirer(s) to exclude from the acquisition of the Assets specific leases (with the exception of the lease between Murph Metals Incorporated and Bestolife Corporation) and operating contracts and arrangements (except that applicable NLRB rules and regulations shall govern regarding the acquirer(s)'s rights of excluding labor contracts from the acquisition of the Assets). The leases and operating contracts and arrangements included in the Assets of the Dallas Plant and in the Assets of the Seattle Plant to be transferred (unless excluded pursuant to this Paragraph) to the acquirer(s) pursuant to this Modified Order are listed in Exhibits I and II hereto, respectively. The acquirer(s) shall notify the Trustee (who shall immediately notify RSR) in writing at the time the acquirer(s) commits to acquire the Assets of the Dallas Plant and the Assets of the Seattle Plants or both, whether the acquirer(s) elects to exclude from the acquisition some or all of the leases and operating contracts and arrangements of the plant(s) being acquired and shall irrevocably specify which leases and operating contracts and arrangements are to be excluded at such time of commitment. If no such notification is received by the Trustee at the time of commitment, the acquirer(s) shall be deemed to have agreed to take assignment of all the leases and operating contracts and arrangements. If

the acquirer(s) elects not to take assignment of any said lease or contractual obligation, then RSR shall not be required to transfer the related leased assets or any rights thereunder to the acquirer(s). In the event the acquirer of the Assets of the Dallas Plant elects not to include the Dallas Plant oxygen contract in the Assets to be acquired, then RSR, upon reasonable notice to the acquirer, may exercise whatever rights RSR has under the Dallas Plant oxygen contract to remove the machinery and equipment leased by RSR from Airco under that contract, provided that RSR shall do so in such a way that no material damage is done to the remaining Assets of the Dallas Plant. The acquirer shall permit RSR at no charge to enter the property during normal working hours to remove such machinery and equipment. RSR shall be under no obligation to renew any lease or operating contract that expires during the Trusteeship.

VI

If the Trustee obtains a prospective acquirer(s) for the Assets of the Dallas Plant and/or the Assets of the Seattle Plant and all the necessary Approvals are obtained within the required period (as provided in Paragraph XI herein), the Trustee shall, at the Closing (herein referred to as the "Closing") of such sale(s), execute and deliver warranty deeds and assignments necessary to transfer and convey the Assets to the acquirer(s) in the forms annexed as Exhibit III hereto, appropriately completed to insert therein only the name of the transferees, dates, any inventories to be purchased (pursuant to Paragraph VIII), and leases and operating contracts and arrangements not to be transferred (pursuant to Paragraph V). Such documents and the license agreement referred to in Paragraph VII shall constitute the sole instruments of conveyance and transfer and the sole agreements which the Trustee on behalf of RSR shall be required to execute and deliver for purposes of consummating divestiture of the Assets pursuant to this Modified Order. Prior to Closing, the acquirer(s) shall perform such inspection of the Assets as may be necessary to determine, to the acquirer's(s) satisfaction, that the Assets to be conveyed and transferred to the acquirer(s) at Closing hereunder conform in all respects to the requirements of this Modified Order and, absent fraud, acceptance by the acquirer(s) at Closing of such warranty deeds and assignments shall constitute conclusive acknowledgement by the acquirer of such conformance, provided however nothing in this paragraph shall affect the Commission's right to seek civil penalties for violation of any provision of this Modified Order. All sale proceeds shall be paid to the Trustee by the acquirer(s) upon delivery to the acquirer(s) of the executed warranty deeds and assignments. Pending distribution of the sale proceeds, the Trustee shall deposit the same in an interest bearing account at InterFirst Bank in Dallas, Texas. The Closing shall be held at a place determined by the Trustee and shall occur within 20 business days following receipt of all Approvals provided for under Paragraph XI. After approval by the Commission of the Trustee's account and payment to the Trustee of any outstanding monies due to the Trustee, any remaining monies including any interest thereon shall be paid to RSR.

VII

The Trustee shall be empowered to grant on behalf of RSR to the acquirer(s) of the Assets, at the option of such acquirer(s), a non-exclusive license (in the form annexed as Exhibit IV), subject to a reasonable royalty not to exceed 2%, to all of RSR's patented sulphur removal and battery recycling processes; *provided, however,* that in the event the acquirer(s) of either the Assets of the Dallas Plant or the Assets of the Seattle Plant is a battery manufacturer, RSR shall only be required to grant such patent licenses to such an acquirer(s) for use at the acquired plant; and *further provided* that RSR is not required to grant such licenses to an acquirer(s) that is a primary lead producer.

VIII

The Trustee shall be empowered to make available for purchase to a prospective acquirer(s) of the Assets some or all (at the acquirer's(s') option) of the respective Plant's inventories (other than inventories required to be returned by RSR and its subsidiaries under tolling contracts) for consideration (payable to the Trustee at the Closing in lawful currency of the United States) in addition to any amounts that may be paid for the Assets. For purposes, hereof, inventories shall include all categories listed in RSR's letter to the Federal Trade Commission dated February 9, 1983 and shall include the specific types of items set forth in the enclosures to that letter. The February 9th letter, along with enclosures, is annexed as Exhibit V hereto. The acquirer(s) shall notify the Trustee (who shall immediately notify RSR) in writing within five business days after Approvals as to the specific inventory items and quantities the acquirer(s) shall purchase. If no such notification is received by the Trustee, the acquirer(s) shall be deemed to have agreed to purchase no inventory. Approximately five days prior to Closing, RSR shall conduct a physical inventory, of the inventories to be purchased by the acquirer(s) at the Closing. The acquirer(s) shall verify the quantities of inventory at the time of the physical inventory and shall confirm such verification in writing. The price to be paid by the acquirer(s) to the Trustee for said inventories shall be the First-In, First-Out (FIFO) cost as carried on the respective accounting records of the Dallas or Seattle plant at the end of the month preceding the time of Closing, and shall be payable to the Trustee at the time of Closing in lawful currency of the United States in addition to the amount that is paid for the Assets. The value and amount of inventory may increase or decrease in the normal course of business, except only that the value of the "Maintenance Stores Inventories" and "Inventoried Supply Items" to be made available to a purchaser shall not be less than the total value of such items as of December 31, 1982 as presented in the above said February 9th letter and enclosures, provided that RSR shall replace in kind any item that is removed from "Maintenance Stores Inventories" and "Inventoried Supply Items" for any purposes other than maintenance or supply of the plant to which the item belongs. RSR shall have the right to remove other items from the categories labeled "Maintenance Stores Inventories" and "Inventoried Supply Items" as long as RSR replaces the value of the items removed. In addition, RSR shall make available to the acquirer(s) prior to the Closing at no charge enough space to bring in and store its (their) own inventory and shall grant the acquirer(s) reasonable access to the Assets to bring in and store such inventory.

IX

RSR shall provide reasonable information and assistance as may be requested by the Trustee and as required by this Modified Order. Such assistance shall include providing written information and data, allowing access to the Dallas and Seattle plants, allowing access to records relating to the Assets of the Dallas Plant and the Assets of the Seattle Plant, providing personnel for tours and inspections, and providing personnel for answering questions. The Trustee or its agents shall be present at all times during any

interaction between representatives of RSR and prospective acquirers. The prospective acquirer(s) shall agree to RSR's usual confidentiality provisions and tour procedures. The Trustee shall have access to all information and data previously provided by RSR or its agents to the Commission relating to prior efforts to divest the Assets.

X

RSR shall continue to operate the Dallas and Seattle Assets for its own account during the Trusteeship and shall not knowingly cause or permit the deterioration of the Dallas and Seattle Assets in a manner that impairs the marketability of any such Assets. RSR may, but shall not be required to, make capital expenditures for the improvement of any such Assets.

XI

The term of the Trusteeship shall be 150 days, commencing from the day following the Commission appointment of the Trustee or from September 15, 1983, whichever occurs first, and ending at 11:59 p.m. (Dallas time) on the 150th day. The Trustee shall have 150 days to find an acquirer(s) for the Assets and to obtain acquirer Approvals. The Trustee shall require any prospective acquirer to demonstrate that such acquirer has present financial capability to acquire and operate the Assets proposed to be acquired by such acquirer. If no acquirer(s) has been found or if Approvals have not been obtained within the 150 days, the Trusteeship shall automatically end at the expiration of such 150 day period. The Trustee shall require that a prospective acquirer file any necessary requests, applications, or notices in connection with obtaining the Approvals not later that 30 days after the Trustee's acceptance of the acquirer's written, binding and enforceable commitment to acquire the Assets proposed to be acquired by such acquirer, unless the Commission for good cause shown, shall extend such 30 day period. The term of the Trusteeship may be extended by 60 days beyond such 150 day period if the Trustee demonstrates to the Commission that such an extension is necessary to enable the Trustee to obtain the Approvals, provided that a prospective acquirer has made a written, binding and enforceable commitment to acquire the Assets of the Dallas Plant or the Assets of the Seattle Plant, or both, subject only to the three conditions specified below, within such 150 day term of the Trusteeship. The period of time may be further extended for an additional 30 days if the Trustee demonstrates to the Commission that such extension is necessary to enable the Trustee to obtain Environmental Approval, provided that all requirements for the first 60 day extension have been met and provided the Commission has approved the acquirer. Provided that all Approvals have been given, the term of the Trusteeship shall be extended to (and solely for purposes of consummating) the Closing as provided in Paragraph VI. No other extension shall be granted. These timing restrictions and extensions apply individually to each plant being sold. The Trustee or prospective acquirer shall not request Approvals unless a prospective acquirer has made a written, binding and enforceable commitment to purchase the Assets of the Dallas Plant or the Assets of the Seattle Plant, or both, subject only to the following three conditions: (1) Transfer and conveyance of the Assets at Closing in substantially the same condition as at the time of the acquirer's commitment, except for ordinary wear and tear, (2) Commission Approval of said acquirer, and (3) Environmental Approval of said acquirer.

Provided, however, that if the acquirer shall have made a written, binding and enforceable commitment (subject only to the three conditions specified above) in a time less than the 150 day period, and if Commission Approval or Environmental Approval has been denied, then the Trustee shall be granted the number of days equal to 150 days minus the number of days expired to the date when the prospective acquirer made a written, binding and enforceable commitment to acquire the Assets of the Dallas Plant or the Assets of the Seattle Plant, or both, subject only to the three conditions specified above, in order for the Trustee to again seek to obtain another acquirer. This process (including extensions for Approvals) may repeat itself until a full 150 days, on a cumulative basis, shall have been expired, at which time the provisions in Paragraph XII apply. This process applies to the Assets of each of the Plants individually.

XII

Upon the divestiture of Assets of both the Dallas and Seattle Plants, or if either or both the Dallas or Seattle Assets have not been divested to an acquirer(s) within the time periods as provided in Paragraph XI, then the Trusteeship shall automatically terminate and RSR shall be completely relieved of all further divestiture requirements in Docket 8959. The term of the Trusteeship (including any extensions thereof as hereinabove provided) shall apply to the Assets of each plant individually, not jointly.

XIII

The Trustee shall be compensated and reimbursed by RSR in a manner as follows:

1. The Trustee shall be paid a flat fee of $35,000, payable $7,000 per month commencing 30 days after appointment.

2. The Trustee shall be paid an incentive of $40,000, to be paid to the Trustee in proportion to the number of plants available to the Trustee to divest for which the Trustee accomplishes divestiture.

3. The Trustee shall be reimbursed monthly for all expenses, the aggregate of which shall not exceed $25,000.

4. The Trustee shall be reimbursed for an additional $25,000 of expenses if such expenditures are approved by the Commission.

5. Under no circumstances shall RSR be required to pay and/or reimburse in aggregate an amount greater than $125,000 to the Trustee.

XIV

Pursuant to the above requirements, none of the assets, properties, rights, privileges and interest of whatever nature, tangible or intangible, acquired or added by RSR, shall be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of RSR, or anyone who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of the capital stock of RSR or to anyone who is not approved in advance by the Federal Trade Commission.

XV

Within forty-five (45) days from the effective date of this Modified Order and every thirty (30) days thereafter until the Trusteeship shall have terminated (as provided in Paragraph XII), the Trustee shall submit a verified report in writing to the Commission with copies to RSR, setting forth: (a) A specification of the steps taken by the Trustee to make public the availability for purchase of the Assets, (b) a list of all persons or organizations to whom notice of availability for purchase has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all internal memoranda, offers, counter-offers, communications and correspondence concerning said divestiture. Such information shall be marked confidential and shall be afforded confidentiality according to the Commission's Rules of Practice. Additionally, the Trustee shall provide

such other reports of efforts to divest the Assets as may be required by the Commission.

XVI

In the event RSR, as a result of the enforcement of a bona fide lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested Assets, RSR shall so notify the Commission within 30 days of such repossession, and within one year thereafter shall divest the reacquired Assets in accordance with the terms and conditions set by the Commission.

By direction of the Commission.

Issued: September 12, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-26212 Filed 9-27-83; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6483; 34-20186; 35-23060; FR-14; S7-956]

Oil and Gas Producers; Full Cost Accounting Practices; Amendment of Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to its rules for application of the full cost method of accounting by oil and gas producers to permit the general exclusion of all unevaluated costs from immediate amortization. The Commission is also adopting requirements to provide for more specific disclosures of the category and age of such excluded costs. The amendments are intended to narrow the diversity of practice resulting from varying interpretations of the Commission's existing rules which permit the exclusion from amortization of "unusually significant" costs of unproved properties and major development projects.

EFFECTIVE DATE: The rules for cost exclusions are effective for costs incurred in fiscal years beginning after December 15, 1983. However, the disclosure provisions shall be effective for financial statements covering fiscal years ending after December 15, 1983.

FOR FURTHER INFORMATION CONTACT: John W. Albert or Lawrence S. Jones (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting final rules which amend its requirements for application of the full cost method of accounting by oil and gas producers to permit the general exclusion of all unevaluated costs from immediate amortization. However, the costs of exploratory dry holes are considered to be evaluated costs under the amended rules and therefore are to be immediately included in the amoritization base. The amended rules also provide for (1) use of an aggregate estimate of impairment on individually insignificant properties; and (2) allocations of costs of major development projects based on ultimate expected reserves or on the projected total number of wells drilled, depending on which is more appropriate in the circumstances. Amendments are also being adopted to provide for more specific disclosures of the category and age of excluded costs.

The proposing release related to these final rules also included provisions related to income recognition on the sale or transfer of oil and gas producing properties. As discussed more fully in the proposing release (Release No. 33-6484) being issued concurrently, the Commission is reproposing rules on this issue. However, the final rules do include an amendment to the provisions for income recognition to clarify that the rules apply equally to all properties held for production, regardless of whether or not they are being amortized currently.

Background

On December 21, 1982, the Commission issued Securities Act Release No. 33-6445 (47 FR 58281) which proposed amendments to its rules on application of the full cost method of accounting by oil and gas producers. The proposed amendments were intended to clarify the criteria for determining (1) which capitalized costs may be excluded from immediate amortization and (2) when gain or loss on the sale or transfer of oil and gas producing properties may be recognized.

The Commission issued the proposed rule amendments because it was aware of a significant lack of consistency in the application of its existing rules. The Commission was concerned that the extensive diversity in current practice created serious problems of comparability among companies which are in essentially similar circumstances and ostensibly use the same method of accounting for their oil and gas producing activities.

With respect to the issue of exclusions of costs from the full-cost amortization base, the Commission identified two alternative approaches for amended rules. The first proposed alternative was to permit exclusion of *all unevaluated costs* in a cost center from the amortization base, while the second alternative was based on the concept of always including a *normal inventory* of unevaluated costs in the amortization base. The Commission also invited commentators to suggest any other appropriate criteria for determining exclusions from current amortization.

The Commission's proposed rules relating to income recognition on sales or other conveyances of oil and gas properties retained in place the existing general rule that the proceeds received from sales of mineral properties by full cost companies should ordinarily be treated as adjustments of capitalized costs with no gain or loss recognized, except where a sale caused a significant alteration in the relationship between costs and reserves in a cost center. The proposal would have established an exception to this general prohibition against income recognition for sales or properties segregated and accounted for as a separate lease brokerage business. The proposed amendments also clarified that the general prohibition applies to *all* properties held for production purposes, regardless of whether or not such properties are being amortized currently.

The lease brokerage exception was based on the concept that oil and gas companies may be involved in two separate aspects of the oil and gas business—the one being oil and gas exploration and production and the other lease brokerage activities. The amendments proposed to restrict gain or loss recognition to properties segregated and accounted for as a distinct lease brokerage operation and to clarify that income recognition was *not* appropriate for typical "farm-out" or production arrangements, which are primarily financing or risk-sharing transactions.

Evaluation of Comments

The Commission received 47 comment letters addressing the criteria for exclusion of costs from the amortization base. Approximately two thirds of the commentators expressed support for the first proposed alternative, which would permit the exclusion of all unevaluated costs for immediate amortization.

These commentators indicated that the full exclusion method was more objective and easier to apply than other alternatives, and also asserted that this method would achieve greater consistency and comparability in finanical reporting. One analyst group criticized the existing rules as too

discretionary to allow comparability and viewed the first alternative as a more precise, consistent, and cost-effective method. Supportive commentators also viewed this approach as providing for a better *matching* of amortization of evaluated costs with the revenues from production of the related proved reserves. Other commentators supported this method on the basis that it appropriately would allow for capitalization of interest on unevaluated costs.

At the same time, certain commentators supporting a blanket exclusion recommended that the guidance provided under this alternative be modified in three respects: (1) The commentators suggested that the proposal to require that excluded properties be assessed individually for impairment would often be impracticable in cases where there are large numbers of properties with individually insignificant costs. Instead, these commentators suggested permitting an aggregate estimation of impairment of such properties, based on historical experience or some other factors. (2) Several commentators argued that dry hole cost are nonproductive costs which constitute evidence of impairment and should thus be considered as evaluated and included in the full cost amortization base. (3) Certain commentators also suggested that the proposed guidance relating to the allocation of costs incurred or to be incurred of major development projects be broadened to permit an alternative allocation method based on total expected proved reserves.

Normal Inventory Concept

Only a few commentators expressed support for the Commission's second proposed alternative, which was to permit exclusion of unevaluated costs in excess of a normal inventory of such costs, computed based on specific percentage criteria. Supportive commentators viewed the normal inventory method as a reasonable and workable compromise between immediate amortization of all unevaluated costs and full exclusion of all unevaluated costs. These commentators rejected immediate amortization on the basis that it would misstate financial results by understating both income and asset values in early years. They also opposed full exclusion because they believe that method would front-end income by deferring normal and unavoidable nonproductive costs.

Many of the commentators supporting [illegible] some other method also specifically opposed the normal inventory approach. The opposition was generally based on the view that the proposed percentage criteria were arbitrary and the implementation of the three-year moving average would be complex without any offsetting benefits in terms of providing data useful for analysis of financial results. These commentators also criticized the normal inventory method as being based on the invalid assumption that all companies have comparable exploration and development strategies and philosophies. The commentators thus questioned whether the computed "normal inventory" would realistically represent any individual company's situation.

Other Suggested Alternatives

Approximately one fourth of the commentators responded to the Commission's invitation to suggest alternatives other than the two specifically identified in the proposing release. Among this group, the most frequently suggested approaches were maintenance of the existing rules which permit exclusion of "unusually significant" costs and a prohibition against *any* exclusions.

Commentators advocating retention of the existing rules expressed differing views as to whether the rules should provide specific guidance for the determination of "unusual significance" or whether the rules should rely on management judgment. Commentators advocating no exclusion of costs from amortization based their position in consistency with the original full cost theory and on general revenue recognition concepts—that is, immediate inclusion prevents the future distortion of the asset base and amortization rate which would result from initial deferral of unproductive costs.

Discussion of Final Rules

In adopting final rules on this issue, the Commission agrees with the majority of commentators that it is appropriate to permit the exclusion of substantially all unevaluated costs from current amortization. The Commission concurs with the majority of the commentators that this approach is objective and conducive to consistent, comparable application. The Commission also believes that it properly associates evaluated costs with proved (or evaluated) reserves. Moreover, since unevaluated properties are required to be assessed periodically for impairment and to have value at least equal to their [illegible] (including any capitalized interest), exclusion from immediate amortization should not distort future income statements by postponing the recognition of nonproductive costs.

In view of the importance of timely assessment of impairment, the Commission is modifying its original proposals in several respects suggested by the commentators. First the Commission finds convincing the arguments that drilling a dry hole on an unevaluated property provides evidence of impairment of the lease carrying costs at least to the extent of the dry hole costs. Accordingly, the final rules specify that dry hole costs should be included in the amortization base immediately upon determination that the well is dry. The Commission believes that drilling a dry hole also may be an indication that part or all of the other related leasehold carrying costs (property acquisition costs, related geological and geophysical costs, and other costs) have been impaired. Accordingly, the Commission cautions registrants to assess such leasehold costs particularly closely.

With respect to the assessment of impairment generally, the Commission also sees merit in the suggestion that an aggregate assessment of impairment be permitted on individually insignificant properties, and the final rules have been revised to permit, but not require, that approach. The rules do not include any specific guidance on the determination of "significance." However, the Commission believes that in general individual properties or projects would be expected to be individually significant if their costs exceed 10% of the net capitalized costs of the cost center. Where individual properties or projects with costs representing less than 10% of the cost center are involved, the Commission believes it is still appropriate to test impairment on an individual basis but will permit companies to aggregate such properties for purposes of this assessment.

In addition, the final rules revise the proposed guidance for allocation of costs on major development projects for purposes of transfers to the amortization base. On this issue, the Commission has concluded, as suggested by commentators, that it is appropriate to allow allocation, either on the basis of the ratio of wells to which proved reserves have been assigned to the total expected number of wells or on the basis of the ratio of proved reserves already established to total proved reserves ultimately expected, whichever [illegible] facts and circumstances

Finally, the Commission is revising its disclosure requirements to provide for more specific information as to the category and age of capitalized costs excluded from current amortization. Because the rules being adopted in this release will have a significant effect on the financial condition and operating results of full cost oil and gas producers, the Commission believes it appropriate to provide for specific information as to the nature of these costs. Consequently, the Commission's existing requirements for disclosure of the nature of costs by category and approximate date such costs were first incurred are also being expanded to require footnote disclosure in tabular form as to the age and category of costs excluded from current amortization.

The revised rules call for an aging of excluded costs as of a registrant's most recent fiscal year end both by category and by date incurred. Disclosure is required of the amounts of each category of excluded costs (1) In total as of the end of the most recent fiscal year, (2) separately by year for amounts incurred in each of the three most recent fiscal years, and (3) in the aggregate for costs incurred in any earlier fiscal years. Categories of cost are to include acquisition costs, exploration costs, development costs in the case of significant development projects, and interest capitalized.

In addition, existing requirements for balance sheet disclosure of the aggregate amount of excluded costs and footnote description of the current status of the projects or properties involved, including information as to the timing of the inclusion of the costs in the amortization computation, have been carried forward in the revised rules. However, the existing requirement to disclose the potential future impact on the amortization rate of excluded costs has been deleted based on experience which has shown that many companies are unable to calculate this information. In complying with the requirements to describe the current status of properties or projects excluded from amortization, registrants may find it appropriate to provide the information as to the age and category of excluded costs in a format which distinguishes offshore and onshore properties.

In taking final action on this issue, the Commission is rejecting the normal inventory method as a basis for final rules in this area. The Commission finds persuasive the arguments of various commentators that the normal inventory method should not be adopted because it is conceptually inferior to full exclusion and, due to its arbitrary and complex nature, not sufficiently representative of an individual company's situation. The Commission appreciates the arguments of certain commentators that some level of nonproductive costs is unavoidable and shares the concern that unrecoverable costs should not be excluded from amortization. However, the Commission does not find that these arguments provide compelling support for the normal inventory method. Rather, the Commission believes these concerns underscore the need for the modifications to the original proposal to require the immediate inclusion of dry hole costs in the amortization base and to permit an aggregate assessment of impairment for individually insignificant properties.

While the final rules permit the general exclusion of all unevaluated costs from immediate amortization, the Commission emphasizes that as soon as it can be determined whether or not proved reserves can be assigned, the related costs should be included in the amortization base. Once these costs are included in the amortization base, they lose their identity for all future accounting purposes. Consequently, individual cost elements cannot subsequently be removed from this base.

Transition Provisions

The amended rules for cost exclusions shall be applied prospectively effective for costs incurred in fiscal years beginning after December 15, 1983. Earlier application is permitted in financial statements for fiscal years beginning prior to that date. However, annual financial statements previously filed with the Commission shall not be restated. The disclosure provisions of the amended rules shall be effective for financial statements covering fiscal years ending after December 15, 1983.

Technical Amendments

The Commission is also adopting technical amendments to its requirements for disclosure of oil and gas reserve information to specify that the maximum period for presentation of an earnings summary prepared on basis of Reserve Recognition Accounting is limited to three years. These requirements apply only for periods for which FASB Statement 69 disclosures are not provided. The Commission is also revising the authority section originally cited in Financial Reporting Release 12.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Remove Section 406.01.c.i and add a new Section 406.01.c.i as follows:

406.01.c Full Cost Method

1. Exclusion of capitalized costs.

2. Include in Section 406.01.c.i the section of this release entitled "Discussion of Final Rules."

This codification is a separate publication issued by the Commission. It will not be published in the Federal Register/Code of Federal Regulations.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604(a), the Commission has prepared a final regulatory flexibility analysis of the economic impact which the amendments proposed herein will have on small entities. This analysis is attached to this release.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Rules

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraphs (i)(3)(ii), (i)(6)(i) and (i)(7)(ii), (k)(7) first sentence of introductory text, (k)(8) first sentence of introductory text, and by adding new paragraph (i)(3)(ii)(C) of § 210.4–10 as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(i) *Application of the full cost method of accounting.* * * *

(3) *Amortization of capitalized costs.*

* * *

(ii) The cost of investments in unproved properties and major development projects may be excluded from capitalized costs to be amortized, subject to the following:

(A) All costs directly associated with the acquisition and evaluation of unproved properties may be excluded from the amortization computation until

it is determined whether or not proved reserves can be assigned to the properties, subject to the following conditions: (*1*) Until such a determination is made, the properties shall be assessed at least annually to ascertain whether impairment has occurred. Unevaluated properties whose costs are individually significant shall be assessed individually. Where it is not practicable to individually assess the amount of impairment of properties for which costs are not individually significant, such properties may be grouped for purposes of assessing impairment. Impairment may be estimated by applying factors based on historical experience and other data such as primary lease terms of the properties, average holding periods of unproved properties, and geographic and geologic data to groupings of individually insignificant properties and projects. The amount of impairment assessed under either of these methods shall be added to the costs to be amortized. (*2*) The costs of drilling exploratory dry holes shall be included in the amortization base immediately upon determination that the well is dry. (*3*) If geological and geophysical costs cannot be directly associated with specific unevaluated properties, they shall be included in the amortization base as incurred. Upon complete evaluation of a property, the total remaining excluded cost (net of any impairment) shall be included in the full cost amortization base.

(B) Certain costs may be excluded from amortization when incurred in connection with major development projects expected to entail significant costs to ascertain the quantities of proved reserves attributable to the properties under development (e.g., the installation of an offshore drilling platform from which development wells are to be drilled, the installation of improved recovery programs, and similar major projects undertaken in the expectation of significant additions to proved reserves). The amounts which may be excluded are applicable portions of (*1*) the costs that relate to the major development project and have not previously been included in the amortization base, and (*2*) the estimated future expenditures associated with the development project. The excluded portion of any common costs associated with the development project should be based, as is most appropriate in the circumstances, on a comparison of either (*i*) existing proved reserves to total proved reserves expected to be established upon completion of the project, or (*ii*) the number of wells to which proved reserves have been assigned and total number of wells expected to be drilled. Such costs may be excluded from costs to be amortized until the earlier determination of whether additional reserves are proved or impairment occurs.

(C) Excluded costs and the proved reserves related to such costs shall be transferred into the amortization base on an ongoing (well-by-well or property-by-property) basis as the project is evaluated and proved reserves established or impairment determined. Once proved reserves are established, there is no further justification for continued exclusion from the full cost amortization base even if other factors prevent immediate production or marketing.

* * * * *

(6) *Mineral property conveyances and related transactions.* * * *

(i) *Sales and abandonments of oil and gas properties.* Sales of oil and gas properties, whether or not being amortized currently, shall be accounted for as adjustments of capitalized costs, with no gain or loss recognized, unless such adjustments would significantly alter the relationship between capitalized costs and proved reserves of oil and gas attributable to a cost center. For instance, a significant alteration would not ordinarily be expected to occur for sales involving less than 25 percent of the reserve quantities of a given cost center. If gain or loss is recognized on such a sale, total capitalization costs within the cost center shall be allocated between the reserves sold and reserves retained on the same basis used to compute amortization, unless there are substantial economic differences between the properties sold and those retained, in which case capitalized costs shall be allocated on the basis of the relative fair values of the properties. Abandonments of oil and gas properties shall be accounted for as adjustments of capitalized costs; that is, the cost of abandoned properties shall be charged to the full cost center and amortized (subject to the limitation on capitalized costs in paragraph (b) of this section).

* * * * *

(7) *Disclosures.* * * *

(ii) State separately on the face of the balance sheet the aggregate of the capitalized costs of unproved properties and major development projects that are excluded, in accordance with paragraph (i)(3) of this section, from the capitalized costs being amortized. Provide a description in the notes to the financial statements of the current status of the significant properties or projects involved, including the anticipated timing of the inclusion of the costs in the amortization computation. Present a table that shows, by category of cost, (A) the total costs excluded as of the most recent fiscal year; and (B) the amounts of such excluded costs, incurred *(1)* in each of the three most recent fiscal years and *(2)* in the aggregate for any earlier fiscal years in which the costs were incurred. Categories of cost to be disclosed include acquisition costs, exploration costs, development costs in the case of significant development projects and capitalized interest.

* * * * *

(k) *Disclosure of oil and gas reserve information and historical financial data.* * * *

(7) *Summary of oil and gas producing activities.* For each fiscal year for which an income statement is required a summary shall be presented that sets forth the current year's additions and revisions to the Present Value of Estimated Future Net Revenues, and the costs associated with the additions and revisions to proved oil and gas reserves, together with all costs determined to be nonproductive during the period. * * *

* * * * *

(8) *Summary of changes in Present Value of Estimated Future Net Revenues.* For each fiscal year for which an income statement is presented, provide a reconciliation between the total Present Value of Estimated Future Net Revenues of an entity's proved oil and gas reserves at the beginning and end of the year. * * *

2. Correction of Financial Reporting Release 12.

The authority section included in Financial Reporting Release 12, 48 FR 36566 on page 36569, third column, first 5 lines was incorrect. The authority section should have read as follows:

"These amendments are adopted pursuant to the authority in Sections 5, 6, 7, 10, 19(a) and Schedule A[25] and [26] of the Securities Act of 1933, 15 U.S.C. 77e, 77f, 77g, 77j, 77s[a] and 77aa[25] and [26]; and Sections 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*, 78m, 78n, 78o(d), and 78w(a)."

* * * * *

Authority: These amendments are adopted pursuant to the authority in Sections 5, 6, 7, 8, 10, 19(a) and Schedule A[25] and [26] [15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s(a) and 77aa[25] and [26]] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company

Act of 1935 and Section 503 [42 U.S.C. 6383] of the Energy Policy and Conservation Act of 1975.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 16, 1983.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to amendments of the Regulation S–X rules for application of the full cost method of accounting by oil and gas producers, has been prepared in accordance with 5 U.S.C. 604(a). The corresponding initial regulatory flexibility analysis appears at 47 FR 58286 (Release No. 33–6445).

1. *Need for and Objectives of Rule*—As discussed in the section of the release entitled, "Background," the Commission became aware of widely varying interpretations of the existing provisions of Regulation S–X which allow oil and gas producing companies using the full cost method to exclude certain capitalized costs from immediate amortization. The Commission is concerned that the resulting diversity in practice creates a serious lack of comparability between financial statements of companies which are essentially in similar circumstances and are using the same basic method of accounting. The financial statement impact of the reduced current amortization expense resulting from the exclusions is intensified because under generally accepted accounting principles (GAAP) excluded properties are usually eligible for interest capitalization.

The objective of the rule amendments is to narrow the diversity of current practice resulting from varying interpretations of the previously existing rules. To that end, the amendments clarify the criteria for exclusion of capitalized costs from immediate amortization.

2. *Issues Raised by Public Comments*—The only commentator to specifically address the Initial Regulatory Flexibility Analysis published with the proposed rules discussed the proposed gain recognition rules. This comment is addressed in the Initial Regulatory Flexibility Analysis of the revised rules related to gain recognition being proposed in a release issued concurrently.

3. *Significant Alternatives*—With respect to the criteria for exclusions from current amortization, the proposing release was specifically drafted to encourage consideration of alternative approaches which would achieve the stated objective of reducing the current diversity in practice. The release therefore proposed two separate sets of rule amendments which embodied considerably different approaches to the issue. The release also explicitly encouraged commentators to discuss other possible criteria.

Consideration of differing reporting or compliance requirements or reporting timetables that take into account different resources of small entities is not necessary since the amendments do not change the recordkeeping requirements or other compliance burdens. Furthermore, since the amendments involve fundamental accounting issues for full cost oil and gas producing companies, and since comparability of financial statements is an essential aspect of accounting and financial reporting, an exemption or an alternative approach designed particularly for small entities would not be appropriate. Moreover, the large majority of registrant commentators supported the alternative which was adopted in the final rules on exclusions. They cited objectivity and ease of application as factors in favor of this approach.

In the Commission's view, the fundamental performance standard for financial reporting is the presentation of all information material for rational investment decisions. The existence of many alternative approaches to disclosure may result in reduced comparability in the data reported and the form of presentation, thereby adversely affecting the ability to analyze the financial statements. Because comparability in financial reporting is important in evaluating issuers' operational and managerial performance, the Commission has historically acted to minimize excessive diversity in reporting of material information when it occurs among companies in essentially the same circumstances. This is generally accomplished by establishing design standards for reporting as the Commission seeks to do in the present case with full cost accounting by oil and gas producers.

[FR Doc. 83-26459 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 239 and 274

[Release Nos. 33-6454, IC-13049; File No. S7-963]

Advertising by Investment Companies

Correction

In FR Doc. 83–6342 beginning on page 10297 in the issue of Friday, March 11, 1983, make the following corrections:

1. In §§ 239.15 and 274.11, item 17, on page 10300, third column, twelve lines from the bottom, insert a parenthesis between the equal sign and the word "base".

2. On page 10301, in the appendix, in the line for "Net change in account value", there should be a dollar sign in front of the figure.

3. After the lines for "Seven days proportional charge . . ." and "Adjusted change in account value", there should have been equal signs.

4. In the line for "Base period return . . .", the figure in the right-hand column now reading "0.01804320" should have read "0.001804320".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0051]

Listing of Color Additives for Coloring Contact Lenses; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that amended the color additive regulations to provide for the safe use of four color additives for coloring contact lenses. This document corrects an erroneous statement.

EFFECTIVE DATE: August 8, 1983.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 83–18370 appearing at page 31374 in the issue for Friday, July 8, 1983, the following correction is made on page 31375: In the second column, the first sentence of the second full paragraph is revised to read "FDA will issue shortly a separate order for dibromodibenzo[*b,def*]chrysene-7,14-dione and is deferring final action on the color additive 6,6'-diethoxy-2,2'-[3*H*,3'*H*]bibenzo[*b*] thiophene-3,3'dione pending receipt and evaluation of additional studies."

Dated: September 22, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-26347 Filed 9-27-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 175

[Docket No. 82F-0046]

Indirect Food Additives: Adhesive Coatings and Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in can coating formulations. This action is in response to a petition filed by Air Products & Chemicals, Inc.

DATES: Effective September 28, 1983, objections by October 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C ST. SW., Washington, DC 20204, 020–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1982 (47 FR 11970), FDA announced that a petition (FAP OB3515) had been filed by Air Products & Chemicals, Inc., Box 538, Allentown, PA 18105, proposing that § 175.300 (b)(3)(xxix) (21 CFR 175.300(b)(3)(xxix)) of the food additive regulations be amended to provide for the safe use of ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4, 7-diol as an adjuvant in can coating formulations.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1 (h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 175 is amended in § 175 is amended in § 175.300(b)(3)(xxix) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxix) * * *

Ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol (CAS Reg. No. 9014–85–1).

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 28, 1983 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective September 28, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: September 23, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–26337 Filed 9–27–83; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Febantel-Trichlorfon Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayvet Division of Miles Laboratories, Inc., providing for safe and effective use of febantel-trichlorfon oral paste as an anthelmintic and boticide for horses.

EFFECTIVE DATE: September 28, 1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3240.

SUPPLEMENTARY INFORMATION: Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 131–412, which provides for use of a febantel-trichlorfon oral paste (Combotel Paste and Negabot® Plus Paste) to treat horses for infections of large and small strongyles, adult and immature ascarids, adult and 4th stage larval pinworms, and mouth and stomach stages of bots. Febantel is approved for use in horses in 21 CFR 520.903a. Trichlorfon is approved in horses in 21 CFR 520.2520d. Febantel suspension and trichlorfon oral liquid in combination are approved for use in horses in 21 CFR 520.903b. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers

Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.903c to read as follows:

§ 520.903c Febantel-trichlorfon paste.

(a) *Specifications.* Each 40 grams of paste contains 2.7 grams of febantel and 16 grams of trichlorfon.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Special considerations.* The labeling shall bear the following statements: Trichlorfon is a cholinesterase inhibitor. Do not use simultaneously with, or within a few days before or after treatment with or exposure to, other cholinesterase-inhibiting drugs, pesticides, or chemicals. Do not administer in conjunction with, or within 1 week of use of, succinylcholine chloride, phenothiazine-derived tranquilizers, or anesthetics.

(d) *Conditions of use*—(1) *Amount.* 6 milligrams of febantel and 35 milligrams of trichlorfon per kilogram of body weight (40 grams of paste per 1,000-pound horse).

(2) *Indications for use.* For removal of large strongyles (*Strongylus vulgaris, S. edentatus, S. equinus*), ascarids (*Parascaris equorum*—adult and sexually immature forms) pinworms (*Oxyuris equi*-adult and 4th stage larvae), small strongyles (various), and mouth and stomach stages of bots (*Gasterophilus intestinalis* and *G. nasalis*) in horses, stallions, breeding mares, pregnant mares, foals, and ponies.

(3) *Limitations.* For oral use in horses. Do not administer on an empty stomach. Not for use in horses intended for food. For horses maintained on premises where reinfection is likely to occur; retreatment may be required in 4 to 8 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Effective date. September 28, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 22, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-26349 Filed 9-27-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by Elanco Products Co., providing for additional labeling statements for use of monensin in cattle feeds.

EFFECTIVE DATE: September 28, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Taylor, Bureau of Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Elanco Products Co., Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46206, submitted supplements to NADA 95-735 revising the labeling for monensin cattle feeds to include dairy and beef replacement heifers with the other classes of pasture cattle presently provided for and to provide for feeding pasture cattle monensin, every other day after the first 5 days of feeding. The supplemental NADA's are approved. The basis for approval of these supplements is discussed in the freedom of information (FOI) summary referred to below.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 by revising paragraph (f)(3)(iii)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(*b*) *Limitations.* Feed to pasture cattle (slaughter, stocker, feeder, dairy, and beef replacement heifers) weighing more than 400 pounds. Feed at the rate of not less than 50 nor more than 200 milligrams per head per day in not less than 1 pound of feed or, after the fifth day feed at the rate of 400 milligrams per head per day every other day in not less than 2 pounds of feed, as monensin sodium. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day.

* * * * *

Effective date. September 28, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 22, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-26338 Filed 9-27-83; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0000/R608; PH-FRL 2439-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule.

SUMMARY: This document corrects and restores tolerances on certain raw agricultural commodities for residues of the fungicide captan. These tolerances were inadvertently omitted or incorrectly listed in a reformatting of 40 CFR 180.103 that was published in the **Federal Register** of November 6, 1981 (46 FR 55113).

EFFECTIVE DATE: Effective on September 28, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (202–557–1900).

SUPPLEMENTARY INFORMATION: Pesticide tolerances for residues of the fungicide captan (*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on certain raw agricultural commodities from preharvest and postharvest uses or combinations of such uses were established under 40 CFR 180.103.

In the **Federal Register** of November 6, 1981 (46 FR 55113), 40 CFR 180.103 was revised by reformatting the section to list the commodities alphabetically with the corresponding tolerance levels. In the process, the commodities turnip greens and turnip roots at 2.0 part per million (ppm) and watermelons at 25.0 ppm were inadvertently omitted and the tolerance level for peaches was erroneously changed from 50.0 to 100.0 ppm.

This notice restores the tolerances for the above commodities as established and correctly indicated in 40 CFR 180.103 before the revision of November 6, 1981.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, pesticides, and Pests.

(Sec. 408(b), 68 Stat. 511 (21 U.S.C. 346a(b))

Dated: September 14, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.103(a) is amended by adding, and alphabetically inserting, the following raw agricutural commodities to read as follows:

§ 180.103 Captan; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Peaches	50.0
* * * * *	
Turnip, greens	2.0
Turnips, roots	2.0
* * * * *	
Watermelons	25.0
* * * * *	

[FR Doc. 83–26133 Filed 9–27–83; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 3E2828, 3E2838/R602; PH–FRL 2440–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of phosphine in or on all raw agricultural commodities. These regulations to establish maximum permissible levels for residues of the fumigant phosphine in or on all raw agricultural commodities were requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: September 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued proposed rules published in the **Federal Register** of July 27, 1983 (48 FR 34078) which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 3E2828 and 3E2838 EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of California proposing the establishment of tolerances for residues of the fumigant phosphine at 0.01 part per million (ppm) in or on all raw agricultural commodities resulting from preharvest treatment of pest animal burrows in agricultural and noncropland areas with aluminum phosphide (PP 3E2828) or magnesium phosphide (PP 3E2838).

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rulemaking.

The pesticides are considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would protect the public health and are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR, Chapter I, Part 180 is amended as follows:

1. By amending § 180.225 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.225 Aluminum phosphide; tolerances for residues.

(a) * * *

(b) Tolerances are established for residues of the fumigant phosphine in or on all raw agricultural commodities at 0.01 ppm resulting from preharvest treatment of pest burrows in agricultural

and noncropland areas with aluminum phosphide.

2. By amending § 180.375 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§180.375 Magnesium phosphide; tolerances for residues.

(a) * * *

(b) Tolerances are established for residues of the fumigant phosphine in or on all raw agricultural commodities at 0.01 ppm resulting from preharvest treatment of pest burrows in agricultural and noncropland areas with magnesium phosphide.

[FR Doc. 83-26132 Filed 9-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 6561]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 3429, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards Programs (202) 287-0176, 500 C Street, Southwest, Donohoe Building—Room 506, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 USC 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and County	Location	Community Nos.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Maine: Kent	Algoma, township of	260738	Sept. 8, 1983, emergency	
New York:				
Herkimer	Ohio, town of	361406	....do	Jan. 3, 1975.
Oneida	Remsen, village of	360541	....do	Mar. 4, 1977.
Oklahoma: Noble	Billings, town of	400347	....do	Aug. 13, 1976.
Pennsylvania: Somerset	Larimer, township of	422515	....do	Nov. 3, 1979 and Jan. 10, 1975.
Texas: San Saba	Unincorporated areas	481184	....do	
Iowa: Fayette	Clermont, city of	190374	Sept. 14, 1983, emergency	Nov. 5, 1976.
North Dakota: Williams	Williston, city of	380319B	....do	May 16, 1978 and Apr. 19, 1983.
Pennsylvania:				
Bradford	Burlington, township of	421054B	....do	Sept. 13, 1974, May 7, 1976, and Sept. 11, 1981.
Butler	Mercer, township of	422352	....do	Jan. 10, 1975.
Arkansas: Conway	Plumerville, city of	050364	Sept. 15, 1983, emergency	June 27, 1975.
Missouri: Warren	Marthasville, city of	290444B	Sept. 14, 1983, emergency, Sept. 14, 1983, regular	Sept. 13, 1974, Nov. 17, 1982.
Virginia: Tazewell	Pocahontas, town of	510337B	Sept. 14, 1983, emergency, Sept. 14, 1983, regular	Nov. 3, 1978, Aug. 15, 1983.
REGION II				
New Jersey:				
Warren	Blairstown, township of	340462B	Sept. 1, 1983, suspension withdrawn	July 26, 1976, Jan. 16, 1976.
Burlington	Evesham, township of	340097B	....do	May 31, 1974, Feb. 27, 1976.
Warren	Hackettstown, town of	340464B	....do	Jan. 13, 1978.

State and County	Location	Community Nos.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
New Jersey: Middlesex	Woodbridge, township of	345331C	do	June 1, 1972, July 1, 1974, and June 25 1976.
REGION III				
Maryland: Kent	Rock Hall, town of	240048B	do	July 26, 1974, Sept. 12, 1975.
Pennsylvania: York	Delta, borough of	422211A	do	Nov. 22, 1974.
Virginia: Tazewell	Unincorporated areas	510160B	do	June 2, 1978.
West Virginia: McDowell	Welch, city of	540123B	do	May 31, 1974, May 7, 1976.
REGION V				
Ohio:				
Lawrence	Athalia, village of	390698B	do	Aug. 1, 1975, Sept. 8, 1978.
Franklin	Groveport, village of	390174C	do	May 31, 1974, June 11, 1976, and Aug. 31, 1979.
Lawrence	Hanging Rock, village of	390699A	do	Mar. 28, 1975.
Stark	Unincorporated areas	390760B	do	Jan. 13, 1978.
Wisconsin:				
Walworth	Delavan, city of	550463B	do	June 7, 1974, June 11, 1976.
Waukesha	Oconomowoc, city of	550486B	do	May 17, 1974, Aug. 15, 1975.
Michigan: Kent	Lowell, city of	260108	do	May 16, 1983.
REGION X				
Alaska: Nome division	Nome, city of	020069B	do	June 28, 1974, Aug. 9, 1977.
REGION II				
New Jersey:				
Warren	Mansfield, township of	340491C	Sept. 15, 1983, suspension withdrawn	Aug. 16, 1978, Oct. 17, 1975, and June 25, 1976.
Monmouth	Allenhurst, borough of	340283C	do	Aug. 24, 1973, Apr. 30, 1976, and Mar. 15, 1979.
Monmouth	Asbury Park, city of	340285C	do	July 13, 1973, Apr. 30, 1976, and Feb. 15, 1979.
Monmouth	Loch Arbour, village of	340306C	do	Nov. 30, 1973, Apr. 16, 1976, and Mar. 15, 1979.
New York:				
Nassau	Bayville, village of	360988B	do	May 3, 1974, Mar. 26, 1976.
Saratoga	Hadley, town of	360718B	do	Sept. 13, 1974, Oct. 23, 1975.
Madison	Munnsville, village of	360407B	do	Aug. 30, 1974, Apr. 30, 1976.
Oneida	Oriskany, village of	360538B	do	Feb. 22, 1974, July 30, 1976.
Oneida	Paris, town of	360538A	do	Nov. 26, 1976.
Madison	Stockbridge, town of	361412A	do	Jan. 3, 1975.
REGION IV				
South Carolina: Charleston	Palms, Isle of	455416B	do	Apr. 2, 1971, July 1, 1974, and Oct. 3, 1975.
Alabama: Calhoun	Unincorporated areas	010013B	do	Nov. 29, 1974, Mar. 24, 1978.
Tennessee: Gibson	Humboldt, city of	470059B	do	May 3, 1974, July 16, 1976.
REGION V				
Illinois:				
Williamson	Marion, city of	170719B	do	June 7, 1974, May 28, 1976.
Will	Rockdale, village of	170710B	do	Mar. 22, 1974, Aug. 6, 1976.
Hardin	Rosiclare, city of	170276B	do	Dec. 17, 1973, Sept. 19, 1975.
Ohio: Brown	Higginsport, village of	390677A	do	Feb. 7, 1975.
Wisconsin: Columbia	Unincorporated area	550561C	do	Nov. 3, 1975, Apr. 15, 1980.
REGION VI				
New Mexico: Bernalillo	Albuquerque, city of	350002	do	Dec. 4, 1979.
New Mexico: Bernalillo	Unincorporated area	350001C	do	Dec. 20, 1974, Sept. 8, 1977, July 10, 1979, and Jan. 31, 1981.
Texas:				
Cameron	South Padre Island, town of	480115A	do	June 7, 1974.
Cameron	Unincorporated area	480101B	do	June 15, 1979.
REGION IX				
California:				
Los Angeles	Long Beach, city of	060136B	do	July 26, 1974, Sept. 15, 1983, and July 11, 1978.
Los Angeles	Redondo Beach, city of	060150B	do	June 28, 1974, May 21, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended. 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: September 20, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-26302 Filed 9-27-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 81

Purchase of Insurance and Adjustment of Claims

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule amends the list of eligible states under the Federal Crime Insurance Program to remove the States of Minnesota, New Mexico, Washington and Wisconsin making its citizens ineligible to purchase Federal Crime Insurance policies against burglary and robbery losses under the Federal Crime Insurance Program after the effective date.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. DeHenzel, Director, Urban Property Insurance Operations Division, Office of Insurance Operations, Federal Insurance Administration, Donohoe Building, 500 "C" Street, SW., Room 433, Washington, D.C. 20472, Telephone Number 202-287-0800.

SUPPLEMENTARY INFORMATION: Proposed rule amendment was published on page 31892 of the **Federal Register** of July 12, 1983, and invited comments for 60 days ending September 12, 1983, amending the list of eligible states under the Federal Crime Insurance Program to remove the States of Minnesota, New Mexico, Washington and Wisconsin. Comments were received from producers and individual policyholders and considered before final action was taken.

This action is being taken under the authority of 12 U.S.C. 1749bbb-10a, on the basis of the Administrator's continuing review of the crime insurance availability in the various states. This action follows extensive consultations with state insurance authorities for the States of Minnesota, New Mexico, Washington and Wisconsin, who have specifically certified that the Federal Crime Insurance Program is no longer needed in their states. It also takes into account the views expressed by the Independent Insurance Agents Association and the Professional Insurance Agents Association that crime insurance is being made available through the private sector in the States of Minnesota, New Mexico, Washington and Wisconsin.

It has been determined that the actions falls within the category of actions which has been categorically excluded from the requirements of 44 CFR Part 10 dealing with the preparation of environmental assessments, and no such assessment has been prepared.

It also has been determined because of the very small number of policies in affected states that this rule will not have a substantial or significant impact upon the number of small entities. Furthermore, there are no information collection requirements involved which require review under Section 3504(h) of the Paperwork Reduction Act of 1978.

List of Subjects in 44 CFR Part 81

Claims, Crime insurance.

PART 81—[AMENDED]

Accordingly, § 81.1(b) is revised to read as follows:

§ 81.1 Jurisdictions eligible for sale of crime insurance.

* * * * *

(b) On the basis of the information available, the Administration has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the states set forth in this paragraph have an unresolved critical market availability situation that requires the operation of the Federal Crime Insurance Program therein as of October 1, 1983.

Accordingly, the program is in operation in the following jurisdictions:

Alabama	Massachusetts
Arkansas	Missouri
California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Pennsylvania
Georgia	Rhode Island
Illinois	Tennessee
Iowa	Virginia
Kansas	District of Columbia
Louisiana	Puerto Rico
Maryland	Virgin Islands

* * * * *

(Sec. 1247, Urban Property Protection and Reinsurance Act, of 1968, as Amended, 12 U.S.C. 1749bbb-17)

Issued at Washington, D.C.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

September 22, 1983.

[FR Doc. 83-26376 Filed 9-27-83; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 302

[Docket—Prep—302A]

Civil Defense; State and Local Emergency Management Assistance Program; Contributions for Civil Defense Personnel and Administrative Expenses

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises regulations governing the program for financial contributions to States and for State and local civil defense personnel and administrative expenses. This revision is necessary to clarify and abridge the existing regulations and to adopt the allocation formula and procedures set out in 44 CFR 302.5.

EFFECTIVE DATES: This rule is effective October 28, 1983 except for § 302.5, which is effective September 28, 1983.

FOR FURTHER INFORMATION CONTACT: Donald J. Carbone, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202-287-3850).

SUPPLEMENTARY INFORMATION: On June 13, 1983, FEMA published for comment in the **Federal Register** (48 FR 27105-27112) a notice of proposed rulemaking on 44 CFR 302 under the Federal Civil Defense Act of 1950, as amended. This followed an Advance Notice of Proposed Rulemaking published at 47 FR 14500-14501.

The Emergency Management Assistance (EMA) program funds are allocated annually to the States based on a formula developed in accordance with the stipulations of that Act and set forth in the existing rule, § 302.3. The formula computation in the rule has been revised to take into consideration those areas that may be affected by natural disasters, in accordance with the amendment to subsection 205(d) of the Act by Public Law 97-86. Also, the Federal Civil Defense Act in 1980 and 1981 defined an improved civil defense program as encompassing "civil defense" preparedness for natural (and technological) disaster as well as enemy attack. Therefore, a thorough revision of the allocation formula has been made to ensure that it best serves the amended civil defense program.

Subsection 205(d) of the Act specifies that for each fiscal year the FEMA Director "shall allocate to each State, in accordance with his regulations and the total sum appropriated hereunder, amounts to be made available to the States for the purposes of this section." The subsection further stipulates: "Regulations governing allocations to the States shall give due regard to: (1) The criticality of the target and support areas *and the areas which may be affected by natural disaster* ["italicized phrase added by Public Law 97-86, December 1, 1981] with respect to the development of the total civil defense readiness of the Nation, (2) the relative state of development of civil defense readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe."

Comments and Considerations

A total of seven responses with comments were received: one from FEMA Region VI, five from State officials and one from a county official. The substantive comments received are paraphased below, in the order of the pertinent sections or paragraphs of the rule, along with FEMA's response.

Section 302.1(a): The phrase "up to one half of the" has been inserted in this section. Does this mean that financial contributions to State and local governments are going to be officially pegged at some figure less than 50 percent? (State comment)

Section 205 of the Federal Civil Defense Act, as amended, contains the clause *"Provided,* that the financial contributions to the States for the purposes of this section shall not exceed one-half of the total cost of such necessary and esential State and local civil defense personnel and administrative expenses." The rule simply reflects this statutory limit.

Section 302.3(a)(2): The wording of this section appears to imply that the State must fund at least 50 percent of eligible costs of this program. We recommend the wording be changed to read "Provide that the State and participating local governments shall match the Federal contribution provided for necessary and essential costs * * *." (a state)

The wording of § 302.3(a)(2) has been changed to read, "Provides assurance of nonfederal contributions at least equal to Federal funding for necessary and essential * * *."

Section 302.3(g): A State may appeal a Regional Director's action to the Associate Director, State and Local Programs and Support, while local governments may appeal adverse decisions to the Director. Eliminate this inconsistency. Also increase the time for the submission of an appeal from 15 to 30 days. (a State)

Section 302.3(g)(2) has been corrected to indicate that local appeals are to be submitted to the Associate Director for State and Local Programs and Support, and the time within which an appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director has been changed from 15 to 30 days.

Section 302.5: No consideration appears to be given to those local governments that have active programs but are not participating in the program. (a State)

The States, through means of their suballocations, may bring into the program those local governments that have active programs but are not participating. If the non-federal funds are insufficient States may submit requests for a portion of the reserve fund for this purpose. FEMA cannot collect accurate data on those local jurisdictions to incorporate into the formula computation.

Section 302.5b: Those States that have developed their Emergency Services beyond FEMA requirements should be funded to continue the expansion and growth of the emergency management programs. (a State)

One of the possible uses of the 2-percent reserve fund is to provide additional funds for special efforts that would enhance State or local capabilities, including the expansion and growth of emergency management programs.

Section 302.5b: EMA funds should be based on two primary factors: (1) Population density and (2) capability development in the emergency management programs. (a State)

FEMA believes that the formula factors in § 302.5 of the rule do consider adequately: (1) Population density on a national basis—33 percent for State population—and (2) capability development in the emergency management programs—the entire amount of EMA program funding to States is for the purpose of maintaining and developing capability in emergency management.

Section 302.5(b): To the lead paragraph, add: "States shall take these factors into consideration when allocating funds to subgrantees." This is to insure that local jurisdictions are treated fairly and in the same manner as the States. (a county comment)

FEMA does not consider it to be necessary to prescribe a formula by which the States will suballocate funds to their local jurisdictions. Therefore it has not adopted a suggested amendment that would mandate States to use the allocation formula in the rule when making suballocations.

Section 302.5b(1): Having a formula in which the major portion of the allocation is based on the previous year's funding level tends to encourage a maintenance type program.

Maintaining State emergency management capability is one of the prime purposes of the EMA program. To factor less than 50 percent of the formula on the basis of the prior year State allocations would negate that purpose. Improvement of staff may be accomplished by requests for a portion of the reserve fund if a State has insufficient funds for that purpose.

Section 302.5(b)(3): Before "(local level)," add: "Local municipalities that are participating members of a formal Unified Emergency Services Organization in a county which is an EMA participant shall be considered EMA participants for this purpose." This is to insure that organizations which have joined together in a Unified Emergency Services Organization are not penalized. (a county)

Consideration of local municipalities that are participating members of a formal Unified Emergency Services Organization cannot be included because the 10-percent factor considers population of participating local jurisdictions rather than numbers of jurisdictions. This avoids double counting of participants for purposes of the formula, and is in consonance with the statement in the discussion section of the proposed rule, "To use numbers of participant jurisdictions, however, would be unfair, especially to States that have chosen to consolidate Civil Defense units for efficiency."

Section 302.5(b)(5): A hold-harmless provision should be included to prevent a severe negative impact on the State's operation and citizens. (a State)

The formula is based on the provisions of the Federal Civil Defense Act, as amended, which does not guarantee that States will receive each fiscal year at least as much funding as the previous year. Further, the level of funding for each year (and consequently the amount of the reserve for supplemental funding) is unknown until Congress approves the FEMA appropriation. As a general principle, however, FEMA will seek at least to maintain capability to the extent funds permit.

Section 302.5(e): The new formula deals primarily with the President's budget request to Congress. It is not clear if the formula will be used in the final appropriation. It appears that the

final annual allocation to the States will be based more on the five factors outlined in the proposed revision rather than the formula. Should this be the case, then the issue of "too subjective" remains with the program. If these factors remain unchanged, then possibly these factors could be better explained in terms that the States could understand and react to. The bottom line is to eliminate, to the maximum extent possible, subjective and judgmental factors that cloud or conceal the EMA allocation process. (a State)

In order to provide the States with EMA planning figures in advance of a fiscal year, the formula is necessarily applied to the EMA budget request. However, § 302.5(g) of the rule states in part, "By September 30 (or as soon thereafter as feasible) the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds." The formula distribution is later adjusted on the bases of the States' applications, the appropriation, and the Regional Director's recommendation and is supplemented by the reserve fund.

It must be recognized that strict application of a mathematical formula may result in some inequities, depending on various circumstances in the States. The five factors in § 302.5(e) are designed to accommodate such conditions. The revised allocation procedure does reduce subjectivity but recognizes that a static formula should not substitute entirely for reasoned judgment based on special considerations. The Act itself recognizes this in allowing the Director discretion.

Section 302.5(f): Remove the provision for making tentative allocations to States. (FEMA Regional comment) FEMA chooses to retain the provision for making tentative allocations in September in order to permit consideration of the Regional Directors' recommendations, to assure full distribution of the budgeted funds and to provide the States more firm figures for their fiscal planning.

302.5(h): To the lead paragraph, add: "which shall include a listing of allocations to State subgrantees who shall be notified of the allocation." The intent is to provide local jurisdictions with allocation information in a timely manner for budget and planning purposes. (a county)

This suggestion is not acceptable. The annual submission document requires a listing of the subgrantees along with the amount of their allocations approved by the State. FEMA notifies the States of their total allocations immediately after the appropriation and allotment of funds. The annual submissions are required within 60 days after notification. However, FEMA will not dictate the time that States notify their subgrantees of their allocations.

A few additional changes to the rule were made after the Notice of Proposed Rulemaking was reviewed by the public:

(1) Indian tribes are included in the definition of subgrantees in § 302.2(w) and provided for under documentation of eligibility in § 302.3.

(2) The early stages of the allocation process described in § 302.5 (c) and (d) have been simplified. Regional Offices will provide to each State its formula distribution figure for planning and negotiating purposes. That amount, or one modified in negotiation between Regional Office and the State, will be requested on the State's application. Based on the requests and the Regional Directors' recommendations, the Director will, after considering the factors in paragraph (c), issue the tentative allocations (paragraph(f)). This in effect combines the "formula distribution" and "preliminary budget allocation" steps.

The rule is changed by moving paragraph (c) to follow (e), by changing "preliminary budget allocation" to "formula distribution" in the present paragraph (d), and by changing the first sentence of paragraph (c) to read, "* * * in each State, the requests of all the States, and recommendations by the Regional Directors."

(3) Section 302.5(f) has been changed to read, "In September * * *" rather than "On or about September 1 * * *". This will allow time to consider and review applications that are due to FEMA August 31.

Cause for § 302.5 To Be Effective on Date of Publication

Public Law 97-86 amended subsection 204(d) of the Federal Civil Defense Act of 1950, as amended, to take into consideration the areas that may be affected by natural disasters. It was effective December 1, 1981.

FEMA sought to modify its allocation procedures to reflect this statutory amendment in time for the Fiscal Year 1983 EMA allocations. The time from anactment of the amendment until the issuance of the tentative EMA allocations for Fiscal Year 1983 in September 1982 did not permit revision of the allocation method through the usual regulatory process. Instead, FEMA chose, as an interim measure for Fiscal Year 1983 only, to revise the formula simply by giving more weight to State population, since natural disasters can affect any or all parts of the States. Also, 1980 population was substituted for 1970 population. The effect of these changes was relatively slight because the formula was applied only to the incremental increase of Fiscal Year 1983 EMA funds over FY 1982 funds and not to the entire EMA allotment.

Meanwhile, FEMA determined that the entire EMA allocation method should be reviewed and, through the regulatory process, be made more equitable, comprehensible, and manageable. A new allocation formula was included in updated EMA regulations. FEMA published an advance notice of proposed rulemaking (47 FR 14500, April 1, 1982), followed by the notice of proposed rulemaking (48 FR 27105-27112).

It is imperative that § 302.5, Allocations and Reallocations, be effective on date of publication of this rule in order that FEMA can use the revised allocation formula and procedures for FY 1984 in compliance with Pub. L. 97-86.

Environmental Impact

The regulation deals primarily with the funding of salaries and administrative expenses. The administrative actions described therein do not individually or cumulatively have a significant impact on the human environment. Hence, this regulation is considered categorically excluded from the requirements of 44 CFR Part 10, "Environmental Considerations," and no environmental documents have been prepared.

Implementing Guidance.

These regulations refer to CPG 1-3 throughout, but FEMA is continuing to rely upon actual notice, through distribution of CPG 1-3 to all participating State and local governments and requiring certification of receipt thereof.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act, which is concerned with small entities. No regulatory flexibility analysis will be prepared.

CFDA Number and Title

This program is listed in Catalog of Federal Domestic Assistance (CFDA) as Number 83.503, Emergency Management Assistance (Emergency Management

Assistance for State and Local Governments).

List of Subjects in 44 CFR Part 302

Civil defense, Grant programs—national defense.

Accordingly, Chapter 1 of Title 44, Code of Federal Regulations, is amended by revising part 302 to read as follows:

PART 302—CIVIL DEFENSE STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

Sec.

302.1 Purpose.
302.2 Definitions.
302.3 Documentation of eligibility.
302.4 Merit personnel systems.
302.5 Allocations and reallocations.
302.6 Fiscal year limitation.
302.7 Use of funds, materials, supplies, equipment and personnel.
302.8 Waiver of "Single" State agencies requirements.

Authority: Sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2253; Reorganization Plan No. 3 of 1978: (3 CFR 1979 Comp., p. 329). E.O. 12148.

§ 302.1 Purpose.

(a) The regulations in this part prescribe the requirements applicable to the Emergency Management Assistance (EMA) program for Federal financial contributions to the States, and through the States to their political subdivisions, for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

§ 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251-*et seq.*).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1–3, Federal Assistance Handbook, and in CPG 1–32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1–3, it includes staffing patterns (including job description changes), budget requirements, and any amendments to the State administrative plan, a request for funds covering the State and its subgrantees and program statements of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1–3.* Civil Preparedness Guide entitled "Federal Assistance Handbook," which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1–3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1–3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered by FEMA Regional Offices using FEMA Form 60–8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20024. One or more copies of CPG 1–3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

(f) *Comprehensive Cooperative Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objectives and accomplishments, particularly under the funded programs.

(g) *Emergency management.* Refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a "civil defense program" as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Public Law 96–342, and section 207, added by Public Law 97–86. Title V calls for an improved civil defense program that includes: "(1) A program structure for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably." Thus, emergency management includes "civil defense" for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use "is consistent with, contributes to, and does not detract from attack-related civil defense preparedness." Also 44 CFR Part 312, Use of Civil Defense Personnel, Materials, and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

(h) *Director.* The head of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(i) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency are identified in CPG 1–3 and may be ordered by FEMA Regional Offices using FEMA Form 60–8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20024.

(j) *Grantee.* A State that has received EMA funds as a result of having a State administrative plan, a statement of work, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1–3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency.* The Federal Emergency Management Agency (FEMA).

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A–87.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President, as published in the **Federal Register** (46 FR 9548) and subsequent amendments or revisions. (See Appendix B of CPG 1–3.)

(o) *OMB Circular A–102.* "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President (42 FR 45828) including amendments or revisions as published in the **Federal Register**. (See Appendix A of CPG 1–3).

(p) *Operational plans (OMB 3067–0123).* Operational plans identify the available personnel, equipment, facilities, supplies, and other resources and provide for coordinated operations to be taken throughout the State in the event of an attack or other disaster.

(q) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1–3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefore in a federally approved indirect cost allocation plan.

(r) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties or parishes, and townships.

(s) *Regional Director.* A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR Part 2.

(t) *State.* Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

(u) *State administrative plan (OMB 3067–0138).* A one-time submission with amendments as necessary to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, and plans and procedures, including personnel standards administered on a merit basis, existing operational plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A–102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1–3. (Also see § 302.3.)

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Director as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State. The term includes Indian tribes when the State has assumed jurisdiction pursuant to State law and tribal regulations.

§ 302.3 Documentation of eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operational plan for civil defense, and an annual submission (including a statement of work) which have been approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and CPG 1–3. A State may allocate a portion of its EMA funds to an Indian tribe as a subgrantee where the State has assumed jurisdiction pursuant to State law and tribal regulations.

(a) *State administrative plans.* Every State has a State administrative plan file with FEMA and is required to keep the plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Director shall not, however, approve any amendments that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivision of the State, mandatory on them, and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, and rules and regulations at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides assurance of nonfederal contributions at least equal to Federal funding for necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense operational plans pursuant to the standards approved by the Director.

(4) Provides for the employment by the State of full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration (5 CFR Part 900), which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648, § 2, 84 Stat. 1908) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970, as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation financial reports) in such form and content as the Director may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A–102, and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular A–102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and projet performance of the State and its subgrantees which meet the federally prescribed standards promulgated in Attachment I of OMB Circular A–102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the federally prescribed standards set forth in Attachment N of OMB Circular A–102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with federally prescribed standards set forth in Attachment O of OMB Circular A–102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1–3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1–3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (see 44 CFR Part 7 and CPG 1–9, Nondiscrimination in Federally Assisted Programs of FEMA).

(16) Provides for timely submission to the appropriate Regional Director of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1–3.

(18) Provides for performance of independent organizationwide audits by State and local governments that receive EMA funds of their financial operations, including compliance with certain provisions of Federal law and regulation in accordance with Attachment P of OMB Circular A 102.

(b) *Emergency operational plans.* Each participating State shall have an emergency operational plan approved by the Regional Director an complying with the criteria therefor set forth in this part and in CPG 1–3, which plan provides for coordinated actions to be undertaken throughout the State when the attack-caused or other major emergencies occur. Included are the basic operational plans of the State and the operational plans for each department of the State government which has an emergency mission. In addition, each subgrantee shall have a local operational plan which conforms with the criteria therefor set forth in CPG 1–3 and CPG 1–5 "Objectives for Local Civil Preparedness" and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with State's operational plan.

(Approved by Office of Management and Budget. Control Number 3067–0123)

(c) *Annual submission.* Each State should include in its annual CCA application the amount of EMA funding requested (see § 302.5(c)). In order to participate for a particular Federal fiscal year, however, each State must also, within 60 days of receipt or notice of a formal allocation made pursuant to the criteria set forth in § 302.5 and in accordance with procedures and criteria specified in CPG 1–3, submit to the Regional Director an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses; (see § 302.5 (d)—(h)).

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement of work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1–3 or to reflect changes in the State's administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Director as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1–3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1–3, and in other federally promulgated criteria referenced in this part. Refusal or failure

to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.* (1) Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1–3 may be made by letter to the Associate Director, State and Local Programs and Support (FEMA), signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Director.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1–3 may submit an appeal through the State to the Regional Director. Upon receipt of such an appeal, the Regional Director shall forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Associate Director, State and Local Programs and Support, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the Director. The State and local jurisdiction (if applicable) will be notified in writing of the Director's decision, including a statement of the reasons therefor.

(Approved by Office of Management and Budget under Control Number 3067–0138)

§ 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648 Section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

§ 302.5 Allocations and reallocations.

(a) The Director shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfilment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State's population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfilment of the statutory requirements to give due regard to "population" and to "the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation."

(3) Ten (10) percent will be allocated on the basis of the State's population in EMA participant jurisdictions (county or municipal) as a percentage of the State's total population, in fulfilment of the statutory requirement to give due to regard to "the relative state of development of the civil defense readiness of the State" (local level).

(4) Five (5) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico, in fulfilment of the statutory requirement to give due to regard to "the relative state of development of civil defense readiness of the State" (State level).

(5) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in § 302.5(b) inequitable. Therefore, the Director will consider prior-year allocations, percentage of total United States population, and the factors set out in § 302.5(c) (1), (2), (4) and (5) in determining their allocations. The remaining balance of the reserve fund will constitute a supplemental fund from which the Director will consider State requests for additional funding and the needs of any interstate civil defense authorities. Certain standards applicable to the allocation of the reserve fund will be set forth in Civil Preparedness Guide (CPG) 1–3.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Director. The State will base its initial EMA

application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Director, based on the current situation in each State, the requests of all States, and recommendations by the Regional Directors. The Director will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a *tentative allocation* to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State can include any additional amounts from the reserve portion of the EMA funds.

(h) Based on, and within 60 days after notification of, its formal allocation, the State shall provide to the Regional Director an annual submission in compliance with the criteria prescribed therefor by the regulations in this part and by CPG 1-3.

(i) In the event a State fails to provide an approvable annual submission on time, the Director may reallocate that State's share of the funds or portions thereof among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(j) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission.

§ 302.6 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds subsequently appropriated for that fiscal year.

§ 302.7 Use of funds, materials, supplies, equipment, and personnel.

Financial contributions provided under the authority of Section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR Part 312).

§ 302.8 Waiver of "single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App. 2251-2297) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

Dated: September 22, 1983.

Jeffrey S. Bragg,

Executive Deputy Director.

[FR Doc. 83-26375 Filed 9-27-83; 8:45 am]

BILLING CODE 6718-01-M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation Project Office

48 CFR Ch. 1

Federal Acquisition Regulation; Extension Date for Federal Agencies To Order FAR Looseleaf Version

AGENCY: Federal Acquisition Regulation Project Office, GSA.

ACTION: Notice of Extension Date for Ordering FAR Looseleaf Version.

SUMMARY: This is the final notice setting forth the procedures for all Federal departments and agencies to order looseleaf copies of the Federal Acquisition Regulation (FAR) initial printing. The FAR, which replaces the Federal Procurement Regulations, the Defense Acquisition Regulation, and National Aeronautics and Space Administration (NASA) Procurement Regulation, will become effective on

April 1, 1984. The General Services Administration (GSA), the Department of Defense, and NASA have finalized the document that will be the operative regulation for the executive agencies and published the FAR in the **Federal Register** on Monday, September 19, 1983. In addition to the **Federal Register** publication, a looseleaf version of the FAR will be printed by the Government Printing Office (GPO) and is available for delivery prior to January 1, 1984. The date for ordering copies of the looseleaf version has been extended to ensure that the initial print order will provide individual copies for all personnel who need them.

It is strongly recommended that all departments/agencies order a copy for each contracting officer, contract specialist, small purchase specialist, and every other employer involved in the procurement process. This will aid in the prompt adjustment to and training in the use of the FAR and ensure a smooth transition.

Departments/agencies are reminded that if they order too few copies of the FAR their inventories may not be replenished from the GPO Superintendent of Documents supply, but copies will have to be obtained on a reprint order and the cost per copy will be considerably higher. Copies ordered now can be obtained at a nominal cost.

Departments/agencies wishing to order or increase their order for the initial printing of the looseleaf FAR are reminded that their printing and binding requisitions (SF–1) must be forwarded to the Central Office, GPO, immediately in order to be included in the initial print order. Printing requisitions, or requests for increasing the quantity on current requisitions, must be received by GPO no later than October 12, 1983. Concurrently, a duplicate copy of the SF–1 must be provided to the GSA FAR Project Office for documentation to the GSA initial printing requisition.

Agency rider requisitions must cite GPO jacket number 410–819 and GSA requisition number 3–00650 and must specify quantity and delivery address. All production costs will be pro-rated to Federal departments and agencies participating. Bureaus, commissions, and regional offices of agencies must submit requisitions through their headquarters offices only. GPO will bill each agency directly in accordance with existing procedures.

Private sector companies, associations, and businesses may obtain looseleaf copies of the FAR by placing orders for required quantities with the Superintendent of Documents, Government Printing Office. (202) 783–3238. However, the subscription price will not be available until October 12, 1983.

ADDRESS: General Service Administration, Office of Acquisition Policy, FAR Project, Room 4010, 18th and F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rusty Olshine or Pam Talbot, FAR Project Office, 202–696–5180.

Lawrence J. Rizzi,

Director, GSA FAR Project.

[FR Doc. 83–26589 Filed 9–27–83; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 48, No. 189
Wednesday, September 28, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is initiating a rulemaking for the purpose of establishing requirements for the long-term management of its process for the imposition of new regulatory requirements for power reactors. This process, commonly referred to as "backfitting," can include both plant-specific changes and generic changes that are proposed to be applied to one or more classes of power reactors. The Commission is seeking responses to a number of broad policy questions before proceeding with proposed amendments to its regulations.

DATE: The comment period expires October 28, 1983. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Mail comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H St. NW, Washington, D.C., between 8:15 a.m. and 5:00 p.m.

Examine copies of comments received at: The NRC Public Document Room, 1717 H St. NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301–492–8693.

SUPPLEMENTARY INFORMATION: The Commission is initiating a rulemaking proceeding for the purpose of establishing requirements for the long-term management of its process for the imposition of new regulatory requirements for power reactors. This process, which can include both plant-specific changes and generic changes that are proposed to be applied to one or more classes of power reactors, is commonly referred to as "backfitting". The Commission intends, as the outcome of the proceeding, to replace its existing regulation (10 CFR 50.109) with a new rule. The Commission's interim policy on backfitting is being announced today in a Policy Statement that is being published elsewhere in this issue.

Section 50.109 provides the following standard for backfitting decisions: backfitting may be required if the Commission finds "that such action will provide substantial, additional protection which is required for the public health and safety or the common defense and security." On its face, this appears to be a relatively high standard, implied by the use of "substantial, additional protection . . . required." In practice, however, § 50.109 has rarely been formally invoked, and it is therefore difficult to tell whether this standard has actually been applied when backfit measures have been considered. The licensed industry argues that a lower standard has been used by the staff in licensing, while the staff argues that in most cases industry has voluntarily implemented new safety measures and has not insisted upon the formal application of the 50.109 standard. The Commission has decided that a standard (or standards) should be specified through rulemaking, and should be applied in backfitting decisions.

The Commission recognizes that the development of measures for the management of the backfitting process for power reactors involves a number of complex issues on which there exist several differing points of view. For example, in a recent presentation to the Commission, representatives of the Atomic Industrial Forum stated that "backfitting is the single most important issue in licensing reform." Among other things, they recommend a standard for backfitting that would impose a burden on the Commission to demonstrate clearly "that the proposed backfit will substantially enhance public health and safety as a result of improved overall safety of facility operations, and that such improvement is justified when considered over the remaining life of the facility." In contrast, the Report of the President's Commission on the Accident at Three Mile Island included the following recommendation to the NRC at page 63: "Included in the agency's general substantive charge should be the requirement to establish and explain safety-cost trade-offs; where additional safety improvements are not clearly outweighed by cost considerations, there should be a presumption in favor of the safety change."

The Commission has received specific backfitting rule proposals from its Regulatory Reform Task Force and from the Atomic Industrial Forum. (The latest AIF proposal is contained in a letter to the Commission dated July 7, 1983.) The Commission has also received the views of its Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals on the backfitting issue. In addition, the Commission has recently provided directions to the NRC staff governing the interim management of the backfitting process for power reactors, including both generic and plant-specific backfitting proposals. Each of these documents and additional background material on the backfitting process are available in the Commission's Public Document Room.

Before proceeding with a proposed rule on backfitting, the Commission believes that it would be helpful to obtain the views of the electric utility licensees, other elements of the nuclear industry and the public on several specific questions regarding backfitting, on the backfitting rule proposals now before the Commission, and on other alternatives for the long-term management of the NRC backfitting process. The Commission is issuing this advance notice of proposed rulemaking for that purpose.

The Commission requests comments on the backfitting rule proposals submitted by its Regulatory Reform Task Force and by the Atomic Industrial Forum, as well as on other alternatives for the long-term management of the backfitting process. In addition, the Commission would appreciate responses to the following questions:

1. How should "backfitting" be defined?

a. Should backfitting management measures apply to proposed hardware

changes, to proposed plant operations changes, to proposed training and staffing changes, to proposed information requests, to proposed requests for analysis or tests, or to other staff-proposed actions, and if so, why? Should they apply to new requirements that are intended to be imposed through rulemaking?

b. The Commission's interim directions to the NRC staff on management of the backfitting process define a backfit as a proposed new staff position or a proposed change in an existing staff position. Does this approach provide a useful and workable basis for defining proposed backfitting actions that should be subject to future backfitting management measures? What should be the baseline set of requirements from which a proposed new requirement or new interpretation of requirements for operating reactors are measured? Should there be a different baseline set of requirements for power reactors that have received a construction permit but have not yet received an operating license and if so, what should that baseline be? What is, or should be, the relationship between the backfitting basline for plants under construction and the baseline established by the construction permit which authorizes construction of the facility in accordance with principal architectural and engineering criteria required to be part of the application for a construction permit by 10 CFR 50.35(a)? Are there other practical alternatives for defining the scope of backfitting controls?

2. What standard should be adopted by the Commission for determining whether to impose a proposed backfitting requirement?

a. To what extent, if at all, should the standard involve the consideration of the expected economic costs of satisfying the requirement as well as the benefits and any adverse effects for safety that are expected to result from imposing the requirement? What factors should be included in these costs?

b. What types evaluations of benefits and costs should be required for proposed backfits to satisfy the standard? Should evaluations be prepared in the case of all backfitting proposals, only in those cases in which an informal appeal process has failed to resolve areas of licensee disagreement, or only in cases in which an affected licensee has made some threshold showing that the proposed backfit is unwarranted? What is the potential impact on the ability of the NRC staff to carry out its safety mission of imposing on the staff the requirement to prepare evaluations for some or all backfitting proposals?

c. How should the standard for making backfitting decisions address the comparison of what may be more qualitative estimates of the expected safety benefit to be derived from a proposed backfit and more quantitative estimates of the expected cost of complying with the proposed requirement? Should there be a presumption in favor of the safety benefit, as the Kemeny Commission recommended, and if not, why not?

d. How substantial a showing should be required to justify the imposition of a proposed backfit? To what extent should probabilistic risk analysis methods be used for this purpose, if at all?

e. There is a substantial difference in the amount and detail of information, and consequently in the degree of finality in the NRC's safety judgments, regarding a power reactor at the construction permit stage and at the operating license stage. Section 50.35(e) of 10 CFR Part 50 states that the issuance of a construction permit does not constitute Commission approval of a design feature. Given this difference, is it appropriate to develop a standard for making backfitting decisions for power reactors that have not yet received an operating license? If so, how should that standard differ from the standard that should apply to backfitting decisions for operating reactors?

3. What administrative process should be used within the NRC for making decisions on whether to impose a proposed backfit? At what level within the agency should these decisions initially be made, and what opportunities for formal or informal appeal should be provided? Should this decisionmaking process be addressed in a proposed backfitting rule?

4. Once a decision is made to impose a proposed backfit, how should that change be implemented on a plant-by-plant basis? How, if at all, should the schedule for implementation of individual backfitting decisions be integrated for a particular power reactor? How, if at all, should the safety interrelationships of approved generic backfits be evaluated as part of the implementation process at individual reactors? To what extent, if at all, should these aspects of the implementation process be addressed in a proposed backfitting rule?

5. The current NRC approach to imposing a new requirement generally involves the separate examination of discrete safety issues rather than an integrated examination of many or all outstanding issues. This approach can lead to overlapping requirements, or to the imposition of some backfits that ultimately may prove to be unnecessary in light of subsequent changes made in response to other safety issues. Should a proposed backfitting rule permit, encourage or require an integrated approach, either on a plant-by-plant basis or for a class of plants, to developing new requirements neded to address all existing safety issues, including the Unresolved Safety Issues (USIs) and severe accident considerations? Would such an approach be feasible and, if implemented, justify a higher threshold for the imposition of any further new requirements for the plants involved than would otherwise be justified?

6. To what extent should the Commission favor a uniform approach in imposing backfits to promote uniform design, procedures, and training, as opposed to allowing the objectives of a backfit to be met in a variety of ways?

7. For plants under construction, should backfitting be defined to consist of any change in staff requirements that go beyond the requirements of the current Standard Review Plan together with such modification as the staff feels is justified?

Separate Views of Commissioner Roberts

I do believe that this advance notice of proposed rulemaking represents a sincere effort by the Commission to achieve an improved and functional set of regulations and procedures to manage the "backfitting" process. Rather, in this step, the majority has displayed its intention to delay implementation of meaninful steps which would ensure that backfits are required only when they are necessary and when they would result in substantial additional safety. Furthermore, I disagree with the majority view that the separately published Policy Statement on Backfitting provides for an effective interim management of backfits. The two steps taken to date by the Commission, i.e., the establishment of the CRGR and the June 22, 1983 Commission directions to the Staff are insufficient. The CRGR applies only to generic requirements and the June 22, 1983 guidance applies only to licensed commercial reactors. The failure to have an effective framework in effect has been cited by regulators and the industry as a major source of uncertainty and instability.

A review of recent rulemaking efforts would demonstrate that the process is a particularly lengthy one when

publication of an advance notice is involved. Recent cases show that, in fact, an average duration between advance notice and proposed rule publication is well over two years. The Commission has already been provided with sufficient comments, information, and alternatives to proceed directly with a proposed rule on backfitting. The Regulatory Reform Task Force, the Ad Hoc Committee for Review of Nuclear Reactor Reform, the Atomic Industrial Forum, the Senior Advisory Group, numerous licensees, and others have provided valuable input and proposals. It is now time for action.

In short, the NRC is already capable of answering the questions posed in this Advanced Notice of Rulemaking. Even if some require further reflection on these questions, this would not preclude the ability of the Commission to go forward with proposed rulemaking.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation Protection, Reactor Siting Criteria, Reporting and recordkeeping requirements.

The authority citation for this document is: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201).

Dated at Washington, D.C. this 22nd day of September, 1983.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary.

[FR Doc. 83-26456 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AAL-3]

Proposed Revocation and Alterations of Colored Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke one Colored Federal Airway and delete certain segments of four others in the State of Alaska because pilots no longer request these airways and air traffic control no longer assigns them a reduction in clutter on affected aeronautical charts will result from a final rule on this proposal.

DATES: Comments must be received on or before November 9, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 83-AAL-3, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written date, 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-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AAL-3." 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's

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 number 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 procedure.

The Proposal

The FAA is considering an amendment to §§ 71.103, 71.107, and 71.109 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke Red Federal Airway R-103 and delete certain segments of Green Federal Airway G-8 and Blue Federal Airways B-25, B-26, and B-38. Aircraft operators planning or conducting flight under IFR no longer request or use these route segments except as alternate routes. The Colored Federal Airways in the State of Alaska are in existence today only as alternate airways for use during periods when any VOR or VORTAC making up the VOR Federal Airway segments that exist parallel to them is out of service due to routine maintenance. Additionally, the VOR's or VORTAC's that make up these parallel VOR Federal Airways have been replaced with more reliable solid-state equipment virtually eliminating the need for the airway segments proposed for revocation or deletion as alternate airways. Further, ATC radar surveillance has been expanded covering these airway segments and enabling ATC to provide alternate routes with radar guidance when a navigational aid is out of service. Sections 71.103, 71.107, and 71.109 of Part 71 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983.

Lists of Subjects in 14 CFR Part 71

Colored Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.103, 71.107, and 71.109 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.103

G–8 [Amended]

By deleting the words "; Kachemak NDB; Wildwood, AK, NDB; INT Wildwood NDB 034° and Campbell Lake, AK, NDB 254° bearings; Campbell Lake, NDB;" and inserting the words "; to Kachemak NDB. From Campbell Lake, AK, NDB, via"

§ 71.107

R–103 [Revoked]

§ 71.109

B–25 [Amended]

By deleting the words "INT Hinchinbrook, AK, NDB 206° and Wessels, Ak, NDB 296° bearing via Hinchinbrook NDB;" and inserting the words "Hinchinbrook, AK, NDB, via"

B–26 [Amended]

By deleting the words "Campbell Lake, AK, NDB, Via Peters Creek, AK, NDB; Summit, AK, NDB; INT Summit NDB 007° and Chena, AK, NDB 218° bearings; Chena NDB, and inserting the words "Chena, AK, NDB, via"

B–38 [Amended]

By deleting the words "Sitka, AK, NDB, via Elephant, AK, NDB;" and inserting the words "Elephant, AK, NDB, via"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); 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. 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, 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 Washington, D.C., on September 16, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-26287 Filed 9-27-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[EDR–460C; Docket 41496]

Tariff Justification; Termination of Rulemaking

Dated: September 21, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The CAB is terminating a proposed rulemaking proceeding because it appears that detriments in terms of foreign policy considerations outweigh the benefits contemplated by the rule. In EDR–460 the Board proposed to require foreign carriers to file economic justifications for tariff filings outside zones of flexibility established under the Federal Aviation Act, Board rules, or intergovernmental agreements. Substantial concern over the foreign policy implications of the proposed rules has been expressed by foreign governments and foreign and U.S. carriers alike. Since it appears that these concerns outweigh the contemplated benefits of the rule, the Board is terminating the rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Peter Schwarzkopf, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5928.

SUPPLEMENTARY INFORMATION: In EDR–460, 48 FR 24916, June 3, 1983, the Board proposed to amend its tariff rules to require, among other things, that foreign air carriers include economic justification data in tariff filings containing fares or rates outside various zones of flexibility. Under the latest extension of time (EDR–460B) comments on the proposed rule would have been timely filed on or before September 23, 1983, with reply comments due October 7, 1983. These fare flexibility zones are provided by the Standard Foreign Fare Level established under section 1002(j) of the Federal Aviation Act, additional fare flexibility granted by the Board, the Standard Foreign Rate Level and additional rate flexibility provided by Board rule (Part 399, Subpart C), or bilateral or mulitilateral pricing agreements between the United States and foreign governments. among the purposes of the proposed amendment were the desire of the Board to provide a basis for reviewing applicable foreign carrier costs and revenues for foreign carrier tariff filings, to avoid unnecessary suspension procedures under circumstances where the filed fares or rates could easily have been justified by submission of applicable foreign carrier economic data, and to reduce the regulatory lag inherent in the alternative reliance on secondary economic data sources.

Under current practice only U.S. carriers are required to file economic justifications for filed tariffs outside the zones of flexibility. Therefore, the Board necessarily must rely on U.S. carrier economic data or other secondary economic data sources in considering the reasonableness of foreign carrier tariffs not falling within the flexibility zones.

The Board has already received numerous comments and Diplomatic Notes from foreign governments, foreign carriers and U.S. carriers expressing considerable concern over the foreign policy implications of our proposed rule. These comments demonstrate a realistic fear that the rule could be seriously counterproductive to the objective of enhancing tariff flexibility in foreign markets. They point out that the Board's action could stimulate retaliatory and perhaps more restrictive economic justification requirements by foreign governments and that such foreign requirements could severely restrict the tariff flexibility that currently exists. They express the fear that current recognized zones of flexibility could become rigid ceilings and floors with a virtual ban on tariffs falling outside those zones. They contemplate that the rule would result in intergovernmental friction, and could generate intolerable and increasing fare regulatory burdens which would defeat the objective of the International Air Transport Competition Act of 1979 to maximize fare flexibility in international markets. Finally, they argue the benefits of the rule are minimal since the Board has alternate sources of economic data for consideration of foreign tariffs. In addition, the potential benefits are probably illusory, since the data filed would not be comparable because of different accounting practices.

The Board believes that these considerations demonstrate genuine foreign policy problems which offset the benefits which were contemplated under the proposed rule. While foreign air carrier data would be desirable, the degree of opposition to our proposal shows that the rule could be counterproductive. Even without the rule, foreign carriers will be free to file economic data that they believe will be supportive of their proposed tariffs. While the absence of the rule may result in a less precise evaluation, and may on occasion lead to unnecessary suspensions, we are persuaded that the alternative risks of the erosion of existing fare flexibility require termination of the rulemaking proceeding.

Because of the degree of concern that has been expressed by foreign governments and carriers, the Board has concluded that this rulemaking proceeding should be terminated immediately without awaiting the expiration of the comment period. This will avoid the possibility that retaliatory

foreign government fare restrictions might be generated, while Board consideration is pending, simply by a desire to impress upon the Board the seriousness of their objections. The objectives of the International Air Transportation Competition Act to maximize fare flexibility will best be served by immediate termination.

Accordingly, the Civil Aeronautics Board terminates the rulemaking proceeding in Docket 41496.

List of Subjects in 14 CFR Part 221

Air rates and fares, Credit, Explosives, Freight, and Handicapped.

(Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482)

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25407 Filed 9-27-83; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6484; 34-20187; 35-23061; S7-992]

Oil and Gas Producers—Full Cost Accounting Practices; Proposed Amendment of Rules

AGENCY: Securities and Exchange Commission.

ACTION: Modification of rule-making proposal.

SUMMARY: The Commission has modified and is proposing for further comment revised amendments to its rules for recognition of gain or loss on sales and other transfers of oil and gas producing properties by registrants using the full cost method of accounting. The rules as originally proposed would have allowed recognition of income on certain transfers of oil and gas properties in connection with lease brokerage activities. Based on its evaluation of comments on the original proposal, the Commission has significant concerns that the lease brokerage concept is not workable. The Commission is therefore proposing for further comment revised rules which would generally eliminate income recognition in connection with sales or other conveyances of oil and gas properties.

DATE: Comments should be received by the Commission on or before December 15, 1983.

ADDRESS: Comments should refer to File No. S7-992 and be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All comments will be available for public inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: John W. Albert or Lawrence S. Jones (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

I. Background and Original Proposal

The Commission's rules on the application of the full cost method of accounting by oil and gas producers generally prohibit income recognition on the sale or transfer of oil and gas properties. In response to concerns that the rules should provide exceptions for registrants operating in lines of business distinct from their exploration and production activities, the Commission proposed rule amendments to allow income recognition on properties segregated and accounted for in a separate lease brokerage account.[1] Based on its evaluation of the comment letters, the Commission is not adopting the proposal to permit recognition of gain or loss on properties segregated and accounted for in a separate lease brokerage account.

In reaching its determination not to adopt the proposed rules, the Commission found that certain arguments of opposing commentators were well-reasoned. These commentators maintained that, although the lease brokerage concept may be technically arguable, it was not workable because of significant practical and conceptual difficulties in distinguishing lease brokerage from production activities.

Because the Commission recognizes that a general prohibition against income recognition would have a significant impact on the operating results of some full cost companies, it has determined to repropose revised rules for public comment in order to ensure that all arguments in favor of income recognition have been adequately heard and considered.

The revised rules on income recognition are proposed to become effective concurrently with the final rules on exclusions of capitalized costs from current amortization announced in Financial Reporting Release No. 14, dated and and issued concurrently with this release. Consequently, they would be effective for cash or other consideration received in fiscal years beginning after December 15, 1983. Although the comment period expires on December 15, 1983, the Commission anticipates announcing the final rules on this issue before companies have prepared their financial reports for the first quarter of 1984.

[1] Securities Act Release No. 33-6445 (47 FR 58281) issued December 12, 1982.

II. Discussion of Comments on Original Proposal

The Commission received 23 comment letters which addressed the issue of gain or loss recognition on conveyances of oil and gas producing properties. Supportive commentators generally advanced few specific arguments and limited their responses to expressions of overall agreement either with the concept of distinct production and brokerage activities or with the results obtained under the proposed rules.

Some commentators opposing the originally proposed rules considered them too restrictive while others viewed them as overly broad or as impracticable. Those who viewed the proposals as overly restrictive cited the arbitrary nature of the 15% retained interest cutoff and the inequity in prohibiting transfers from the full cost pool to a brokerage account especially in the case of companies newly establishing a brokerage operation. On the other hand, the commentators who judged the proposed rules as too permissive or as unworkable focused in varying degrees on: (1) The impracticability of distinguishing lease brokerage activities from production activities, (2) the inability of most companies to predict their ultimate retained interest, (3) the fact that transfers between brokerage and production accounts occur frequently, and (4) the inconsistency of gain or loss recognition with the basic concept of full cost accounting.

Although several of these commentators expressed agreement with the Commission's attempt to identify production and lease brokerage as distinct aspects of the oil and gas business, they argued that it was extremely difficult, if not impossible, for any company with significant oil and gas exploration and production operations to predict accurately the ultimate use of newly acquired oil and gas properties or to estimate its ultimate retained interest with any degree of certainty. These commentators further asserted that this uncertainty exists because transfers and conveyances to partnerships, joint ventures and other forms of drilling arrangements are risk-sharing and financing techniques integral to the normal business activities of the industry. Thus, transfers represent

the usual rather than the unusual transaction. A few commentators also opposed the proposed rules on the grounds that they eroded basic distinctions between the full cost and successful efforts methods of accounting. These respondents viewed full cost accounting as intended to recognize income only as reserves are produced and cited the availability of the successful efforts method to companies who deemed property-by-property income recognition to be appropriate.

III. Evaluation of Comments and Discussion of Reproposed Rules

Based on its review and evaluation of the comment letters to the original proposals, the Commission believes that, in general, no gain or loss should be recognized on sales or transfers of oil and gas producing properties. In reaching this tentative conclusion, the Commission basically concurs with the views of opposing commentators that, although the lease brokerage distinction may be technically arguable, it is not practicable for most companies with substantial producing activities to segregate their properties into two distinct classes at date of acquisition. Accordingly, the proposed distinction between properties held for production and those held for resale would be imprecise and extremely difficult, if not impossible, to implement. In addition, the Commission finds convincing the arguments that its proposed 15% limitation on retained working interests was both arbitrary and unworkable since it is not practicable for a company to know with any degree of certainty at acquisition of a particular property whether it will retain an interest greater than 15% in that property.

For these reasons, the Commission is now proposing revised rules which would prohibit income recognition on sales or other transfers of properties by companies using the full cost method, where the conveyance provides, in substance, for the receipt or retention of an economic interest in the properties. Instead, all cash consideration received in connection with such conveyances, including transfers to related partnerships, joint ventures, or drilling arrangements (including management fees and reimbursement of organization, offering, or general and administrative expenses) would be credited to the full cost account. However, the amount credited to the full cost account need not include amounts that represent reimbursement of costs incurred if such amounts are treated as offsets to the related expense. To the extent that economic benefit is received from such cash consideration or from disproportionate cost sharing, it would be recognized through a lower amortization over the productive life of the oil and gas reserves. Similarly, no income would be recognized in connection with drilling or other services performed on properties in which the registrant holds an ownership or other economic interest.

The Commission realizes that these proposed rules represent a significant change from those proposed in Release No. 33-6445 and from the staff position on income recognition incorporated in Staff Accounting Bulletin No. 47. Accordingly, the Staff Accounting Bulletin will be amended if appropriate upon issuance of any final rules in this area. The previous staff position and Commission proposals were designed to accommodate the situation where sales of mineral properties were a significant part of the ongoing activities of an oil and gas producing company using the full cost method of accounting. After fully evaluating the comments received on this issue, however, the Commission believes that its earlier proposed approach is not appropriate, primarily because full cost accounting is based on an overall cost center concept and conveyances are integral to an oil and gas producing company's operations, including financing activities, in the current economic environment. The Commission appreciates that some enterprise may engage in sales/transfers to a greater extent than others but believes that primary involvement in lease conveyance activities may indicate that the economics of the enterprise are more consistent with the property-by-property orientation of the successful efforts method than with the cost center concept of the full cost method in which individual items lose their identity.

As noted earlier, the rules for income recognition are being reproposed so that all arguments in support of income recognition can be adequately considered. Commentators are urged, therefore, to address the propriety of all aspects of the proposed prohibition against income recognition by full cost companies—not only lease brokerage but drilling services and management fees as well.

IV. Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an initial regulatory flexibility analysis of the economic impact which the amendments proposed herein will, if adopted, have on small entities. This analysis is attached to this release.

List of Subjects in 17 CFR Part 210

Accounting, Reporting requirements, Securities.

Text of Proposed Rules

Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraphs (i)(6)(iii) (A) and (B) of § 210.4–10 to read as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(i) *Application of the full cost method of accounting.* * * *

(6) *Mineral property conveyances and related transactions.* * * *

(iii) *Partnerships, joint ventures and drilling arrangements.*

(A) All cash consideration received from sales or transfers of properties in connection with partnerships, joint venture operations, or various other forms of drilling arrangements involving oil and gas exploration and development activities (e.g., carried interest, turnkey wells, management fees, etc.) shall be credited to the full cost account, except to the extent of amounts that represent reimbursement of organization, offering, general and administrative expenses, etc., or payment for such services (i.e., management fees) if such amounts are treated as offsets to the related expense.

(B) No income shall be recognized in connection with services performed on properties in which the registrant or a majority-owned affiliate holds an ownership or other economic interest.

Authority: These amendments are being proposed pursuant to the authority in Sections 5, 6, 7, 8, 10, 19(a) and Schedule A [25] and [26] [15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s(a), 77aa [25] and [26]] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company Act of 1935 and Section 503 [42 U.S.C. 6383] of the Energy Policy and Conservation Act of 1975.

By the Commission.
George A. Fitzsimmons,
Secretary.
September 16, 1983.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, which relates to proposed amendments of the Regulation S–X rules for application of the full cost method of accounting by oil and gas producers, has been prepared in accordance with 5 U.S.C. 603.

1. *Reasons for Proposed Action*—On December 12, 1982, the Commission issued Securities Act Release No. 33–6445 (47 FR 58281) which proposed amendments to its rules on application of the full cost method of accounting by oil and gas producers. As discussed in that release under the heading "Related Issue—Mineral Property Conveyances," the staff has become aware of confusion as to the circumstances under which the Commission's rules permit gain or loss recognition on transfers of oil and gas producing properties. This misunderstanding also creates a potential for inconsistency in accounting practice and noncomparability of reported results.

With respect to the drilling arrangement rules, there is uncertainty as to when leases may be eligible for gain or loss recognition under Rule 4–10(i)(6), which generally prohibits gain recognition with limited exceptions. In Release No. 33–6445, the Commission proposed to clarify the criteria for determining whether it is appropriate to recognize gain or loss on the sale or transfer of oil and gas producing properties. The amendments proposed in that release would have allowed recognition of gain or loss on transfers of properties segregated and accounted for in a separate lease brokerage account. The proposed amendments would also have revised the existing rules on drilling arrangement income to clarify that income recognition was *not* appropriate for typical "farm-out" or production arrangements, which are primarily financing or risk-sharing transactions. The proposed amendments also included certain percentage guidelines and other restrictions on properties included in the lease brokerage account. For instance, the rules proposed to prohibit classification in a brokerage account if the transferor expected to retain the equivalent of a greater than 15% working interest in the property. Transfers to and from the full cost pool were also generally to be prohibited.

However, based on its evaluation of the comment letters, the Commission determined not to adopt these rule amendments. In reaching its determination not to adopt the proposed rules, the Commission found that certain arguments of opposing commentators were well-reasoned. These commentators maintained that the basic lease brokerage concept was not workable because of significant practical and conceptual difficulties in distinguishing lease brokerage from production activities.

Because the Commission recognizes that a general prohibition against income recognition would have a significant impact on the operating results of some full cost companies, it has determined to repropose revised rules for public comment in order to ensure that all arguments in favor of income recognition have been adequately heard and considered.

One commentator addressed the regulatory flexibility aspect of the originally proposed rules. This commentator asserted that the proposed gain recognition rules would have an adverse competitive impact on small entities which accumulate an unproved lease inventory for subsequent transfer or sale, although not strictly in the lease brokerage business. Under the proposed rules, such entities could not segregate as current assets the costs associated with the lease inventory. Because the modified rules, if adopted, would reject the lease brokerage concept for all registrants, the Commission believes small entities would not be at a competitive disadvantage.

2. *Objectives*—The objective of the proposed amendments is to narrow the diversity of current practice resulting from varying interpretations of the existing rules. To that end, the proposed amendments would clarify the criteria for recognition of gain or loss on sale of oil and gas producing properties.

3. *Legal Basis*—The Commission is proposing the amendments to the rules for the application of the full cost method of accounting pursuant to the authority in Sections 5, 6, 7, 8, 10, 19(a) and Schedule A[25] and [26] [15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s(a), 77aa[25] and [26]] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n 78o(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company Act of 1935; and Section 503 [42 U.S.C. 6383] of the Energy Policy and Conservation Act of 1975.

4. *Small Entities Subject to Rule*—For purposes of this analysis, the Commission is using the definition of "small business" as adopted in Securities Act Release No. 6380.[2] That release provides that when used in reference to the Securities Act, small business means any issuer whose total assets on the last day of its most recent fiscal year were $3 million or less and is engaged or proposes to engage in "small business financing."[3] When used with reference to an issuer or a person other than an investment company under the Securities Exchange Act, small business means an issuer or person that, on the last day of its most recent fiscal year, had total assets of $3 million or less. Accordingly, the amendments would affect all entities engaged in oil and gas production which fall within the Commission's definition of a "small entity." There were approximately 200 such entities that filed reports on Form 10–K for their fiscal years ending 1981.

5. *Reporting, Recordkeeping and Other Compliance Requirements*—The proposed amendments would introduce no new data collection, recordkeeping or reporting requirements. The required information is already generally available as an integral part of existing accounting records and the amendments would affect only the way in which existing data are considered in the computation of gain or loss on transfers of mineral properties.

The revised rules could have a significant impact on an individual registrant's reported net income. (There will be no effect on actual cash flows.) The Commission is unable to ascertain whether this book income impact could have an effect on competitive position or the ability to sell securities in the capital markets.

6. *Overlapping or Conflicting Federal Rules*—The Commission believes that no present Federal rules duplicate or conflict with the proposals.

7. *Significant Alternatives*—With respect to the mineral property conveyances issues, the consideration of differing reporting or compliance requirements or reporting timetables that take into account the different resources of small entities is not necessary since the proposed amendments would not change the recordkeeping requirements or other compliance burdens. Furthermore, since the proposed amendments involve fundamental accounting issues for full cost oil and gas producing companies

[2] Securities Act Release No. 6380 (January 28, 1982) [47 FR 5215.]

[3] Small business financing is defined to mean conducting or proposing to conduct an offering of securities which does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. The Section 3(b) limitation is presently $5 million.

and comparability of financial statements is an essential aspect of accounting and financial reporting, an exemption or an alternative approach designed particularly for small entities would not be appropriate.

In the Commission's view, the fundamental performance standard for financial reporting is the presentation of all information material for rational investment decisions. However, the existence of many alternative approaches to disclosure may result in reduced comparability in the data reported and the form of presentation, thereby adversely affecting the ability to analyze the financial statements. Because comparability in financial reporting is important in evaluating issuers' operational and managerial performance, the Commission has historically acted to minimize excessive diversity in reporting of material information when it occurs among companies in essentially the same circumstances. This is generally accomplished by establishing design standards for reporting as the Commission seeks to do in the present case with full cost accounting by oil and gas producers.

8. *Solicitation of Comments*—The Commission encourages the submission of comments with respect to any aspect of this initial regulatory flexibility analysis and such comments will be considered in the preparation of the final regulatory analysis if the proposed amendments are adopted. The Commission is especially interested in any empirical data on the costs and/or benefits of the proposed amendments. Persons wishing to submit written comments should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. All submissions should refer to File No. S7–992 and will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. 20549.

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17 CFR Part 229

[Release Nos. 33-6482; 34-20185; 35-23059; File No. S7-991]

Proposed Amendments to Industry Guides

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to Industry Guides and advanced notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission today authorized the publication for public comment of proposed amendments to Guide 1 of the Securities Act Industry Guides and to Guide 1 of the Exchange Act Industry Guides. The amendments are proposed in response to a rulemaking petition and would require disclosure by electric and gas utilities of the effects on book value and on an alternatively computed earnings per common share arising from the issuance of new equity securities at below book value.

DATE: Comments should be received on or before November 18, 1983.

ADDRESSES: Comments should be addressed in triplicate to Geroge A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7–991. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elliot M. Pinta, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today authorized the publication for public comment of proposed amendment to Guide 1 of the Securities Act Industry Guides (which Guide is entitled "Disclosure of principal sources of electric and gas revenues") and to Guide 1 of the Exchange Act Industry Guides (which Guide is entitled "Disclosure of principal sources of electric and gas revenues").

I. Background

The amendments are being proposed in response to a rulemaking petition filed by the California Association of Utility Shareholders (the "Association") requesting that the Commission promulgate a requirement for the disclosure of the effects, both on book value per common share and on an alternatively computed earnings per common share, when new equity securities of rate-regulated companies are issued at a price which is less than the underlying book value per share. The petition would require a tabular reconciliation of the beginning and ending book value per share in which the elements that affect book value, such as earnings, dividends, and capital stock transactions, would be identified and quantified. The reconciliation would immediately follow the earnings per share data on the face of the income statement. Following the book value reconciliation the Association also seeks disclosure of dilution adjusted earnings per share, which would be computed by adding (or substracting) the net change in book value per share to the dividends declared the reported period. Finally, the petition would require that the significant dilution in earnings (as they define it) and/or in book value be explained in the "Management's discussion and analysis of financial condition and results of operations" section of prospectuses and shareholder reports.

II. Discussion of Petition

The Commission is aware that there exists a divergence of opinion as to the value of such book value data to the investment decision making process. To assist commentators in evaluating the proposed amendments, a brief discussion of the differing viewpoints follows.

The Association believes that book value per share has particular relevance to a utility shareholder and hence disclosure of any erosion in such a figure is of prime importance. Its basic premise is that a utility's earnings and its shareholders' dividend returns are directly related to book value per share because the regulatory authorities, in effect, allow a return to be earned on book value. In the Association's view, conventional financial statements ignore the dilutive effects of the issuance of shares below book value and therefore overstate earnings per share. It believes that utility company shareholders have not been made aware of the magnitude of the dilution that has taken place in the past and which may continue in the future. The Association contrasts this to the dilutive effect on earnings per share resulting from the exercise of stock options and warrants, or the conversion of senior securities into common stock, all of which are required to be disclosed in financial statements. A related aspect, which it also believes is not made clear, is that the issuance from book value results in a transfer of equity from existing shareholders to new purchasers.

In contrast to the Association's views, a number of questions may be raised about requiring the disclosure of such book value data in Commission filings. First, the informational value of such data to the unsophisticated investor is unclear. Such figures may not tell investors what return they can expect on their investment or what the marketplace will pay them for it. A corollary of this premise is that the inclusion of this data is Commission filings may give the data unwarranted credibility and may be confusing to the

unsophisticated investor, particularly when it is presented in conjunction with the more conventional financial statement figures. Second, it is questionable whether a utility's earnings are necessarily related to book value. Utility commissions generally determine what they will allow a utility to earn by analyzing its capital structure to ascertain the composite rate of return to adequately meet its capital requirements, then multiplying this composite rate of return by the rate base. Book value may not necessarily have a direct relationship to either the rate base or the computation of the composite rate of return. Third, should any investor be interested in ascertaining book value, it can easily be obtained by simple arithmetic computation from figures already disclosed in the required financial statements in prospectuses and annual reports. Thus, the question appears not to be one of disclosure versus nondisclosure but rather one of emphasis. Finally, requiring disclosure of book value dilution to existing shareholders resulting from equity issuances at a discount from book value raises the question of whether disclosure should also be required of dilution to new purchasers when shares are sold at a premium over book value.

III. Discussion of Proposed Amendments to Industry Guides

The Commission believes that the appropriate implementation of the Association's proposal would be by amendments to the Industry Guides [1] rather than by amendments to Regulation S–X (17 CFR Part 210), the financial statement requirements, and inclusion in the income statements. This latter course, it is believed, would have too much potential for confusion to investors, such as by presenting two different sets of earnings per share figures in the certified financial statements and by elevating book value data to equal prominence with that of earnings per share.

In other respects, the proposed amendments are generally similar to those requested by the Association, namely, they would identify and quantify, in tabular form, the effects on book value and earnings of the issuance of the securities at a discount from the underlying book value.

The proposed amendments would be applicable to both Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] registration statements and to Form 10's and 10–K's filed under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.]. The proposed disclosure requirements, however, are slightly different depending upon the type of form involved—the proposed disclosure in Securities Act forms would emphasize the offering price and the impact of the offering whereas the proposed disclosure in the Exchange Act forms would be directed toward the changes occurring over the reporting period in question.

As proposed, the revised Guides also would remind registrants that any material impact of such dilutive stock issuances may necessitate an explanation in "Management's discussion and analysis of financial condition and results of operations" (Item 303 of Regulation S–K [17 CFR 229.303]). Examples of such discussion would be an explanation of the factors which mandated the issuance at a discount from book value and an explanation of the potential impact, if any, of such dilution on the registrant's rate base and future rate increases.

In addition to soliciting comments on the proposed Guide amendments, the Commission is also specifically inviting responses to the following series of questions which give commentators an opportunity to consider other disclosure aspects of financings made at discounts from book value:

A. General Need for Rulemaking

(1) In general, is book value data, such as that proposed herein, of sufficient value to investors to justify mandating its disclosure?

(2) Is the proposed disclosure potentially confusing or capable of being easily misinterpreted by investors, particularly unsophisticated ones?

(3) What is the relevance of the proposed disclosure to the investment decision process, i.e., is it believed to be an indicator of future earnings (or lack thereof), or of future market prices, or of future rate making results, or of something else?

B. Scope of Rulemaking

(1) If this type of disclosure is, in fact, desirable, should its applicability be limited to electric and gas utilities, or should it be expanded to all rate regulated industries, or even to any business entity that issues equity securities at below book value?

(2) Should this type of disclosure also be required in the annual reports to security holders, as requested by the Association, in addition to Securities Act and Exchange Act filings?

(3) If dilution to existing shareholders' interests resulting from the issuance of equity securities at a discount from book value is of sufficient importance to merit specific disclosure, should disclosure of dilution to purchasers also be mandated when shares are issued at a premium over book value?

C. Implementation

(1) Should the Commission mandate a particular location in the prospectus (and other filings) for this disclosure?

(2) Should the Commission mandate disclosure in "Management's discussion and analysis of financial condition and results of operations" (Item 303 of Regulation S–K [17 CFR 229.303]) concerning the impact of financings at a discount from book value?

(3) Is an industry guide the proper repository of such a disclosure requirement, or should it be in Regulation S–K (The Standard Instructions For Filing Forms) [17 CFR Part 229], or in Regulation S–X (Form And Content Of And Requirements For Financial Statements) [17 CFR Part 210], or elsewhere?

D. General

Are there any other disclosure aspects of equity issuances at a discount from book value which the Commission should consider at this time?

IV. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the Guides, as well as on the questions listed above or on other matters which might have an impact on the proposals contained herein, are requested to do so. Commentators are specifically invited to make suggestions as to other revisions.

V. Statutory Authority

The Commission hereby publishes for comment amendments to Guide 1 of the Securities Act Industry Guides and to Guide 1 of the Exchange Act Industry Guides, pursuant to the Securities Act of 1933, particularly Sections 7, 10 and 19(a) thereof, and to the Securities Exchange Act of 1934, particularly Sections 12, 13, 15(d) and 23(a) thereof.

As required by Section 23(a) of the Exchange Act, the Commission also requests comment on whether the rulemaking actions revising the Industry Guides would have an adverse impact on competition or would be a burden on competition that is neither appropriate nor necessary in furthering the purposes of the Securities Act and the Exchange Act.

[1] The Industry Guides do not constitute Commission rules; they represent practices followed by the Division of Corporation Finance in administering the disclosure requirements of the Federal securities laws. The Industry Guides are listed at 17 CFR 229.801 and 229.802.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497, sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117–119, 155; sec. 308(b), 90 Stat. 57; secs. 202–204, 91 Stat. 1494, 1498–1500; 15 U.S.C. 77g, 77j, 77s(a), 78*l*, 78m, 78o(d), 78w(a))

Text of Proposals

In accodance with the foregoing, it is proposed to amend the Securities Act Industry Guides and the Exchange Act Industry Guides (March 16, 1982; 44 FR 11476) as follows:

Securities Act Industry Guides

Disclosures by Electric and Gas Utilities

Guide 1.

1. Disclosure of Principal Sources of Electric and Gas Revenues—[Text unchanged from existing Guide 1].

2. Disclosure of Impact of Issuance of Equity Securities at Below Underlying Book Value—In registration statements registering equity securities for issuance at below underlying book value, the following tabular presentation should be included in the prospectus:

RECONCILIATION OF BOOK VALUE PER COMMON SHARE [ALL FIGURES ON PER SHARE BASIS]

Public offering price		$
Book value, end of previous fiscal year.	$	
Add: Earnings since end of previous fiscal year.		
Other (describe)		xxxxx
Less: Cash dividends declared since end of previous fiscal year.		
Other (describe)		xxxxx
Book value prior to offering		
Less:[1] Dilution of book value from sale of new securities at below book value.		xxxxx
Book value after offering		
Adjusted Earnings Per Common share		
Primary earnings per common share given in financial statements.		
Earnings per common share adjusted for dilution (cash dividends declared plus net increase [minus net decrease] in book value per share).		

[1] This would only include the effects of this offering; other offerings made during the period would be included in "Other" above.

Note.—Registrants are reminded that any material impact of such issuances at a discount from book value may necessitate a discussion in "Management's discussion and analysis of financial condition and results of operations" (Item 303 of Regulation S–K [17 CFR 229.303]). Such discussion might include, among other things, disclosure of the factor(s) which led to the issuance at a discount from book value and disclosure of the potential impact, if any, of the book value dilution on the registrant's rate base.

Exchange Act Industry Guides

Disclosures by Electric and Gas Utilities

Guide 1.

1. Disclosure of Principal Sources of Electric and Gas Revenues—[Text unchanged from existing Guide 1].

2. Disclosure of Impact of Issuance of Equity Securities at Below Underlying Book Value—In registration statements filed on Form 10 or reports filed on Form 10–k the following tabular presentation should be included when the registrant has issued equity securities at below the underlying book value during the fiscal year covered by the Form 10–K or during the past full fiscal year and any interim period covered by Form 10.

RECONCILIATION OF BOOK VALUE PER COMMON SHARE

[All Figures on Per Share Basis]

Book value, beginning of period		$
Add: Earnings during period	$	
Other (describe)		xxx
		xxx
Less: Cash dividend declared during period.		
Other (describe)		xxx
		xxx
Less: Dilution of book value from sale of new securities at below book value.	xxx	
Book value, end of period		
Adjusted Earnings Per Share		
Primary earnings per common share given in financial statements.		
Earnings per common share adjusted for dilution (cash dividends declared plus net increase [minus net decrease] in book value per share).		

Note.—Registrants are reminded that any material impact of such issuances at a discount from book value may necessitate a discussion in "Management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K [17 CFR 229.303]). Such discussion might include, among other things, disclosure of the factor(s) which led to the issuance at a discount from book value and disclosure of the potential impact, if any, of the book value dilution on the registrant's rate base.

List of Subjects in 17 CFR Part 229

Securities.

By the Commission.

September 16, 1983.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-25889 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 250 and 259

[Release No. 35-23068; File No. S7-993]

Proposed Revision of Annual Report of Registered Holding Companies and Related Amendment to Rule 48(b)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") requests comments on a proposal to amend the annual report (Form U5S) for registered holding companies under the Public Utility Holding Company Act of 1935 ("Act"), and amend Rule 48(b) (17 CFR § 250.48(b)). The action is intended to simplify the annual report and avoid duplicative reporting by providing more fully for information prepared to satisfy other requirements. Rule 48(b), concerning advances to employees, is proposed to be revised to conform to the standard of materiality proposed.

DATE: Comments must be received on or before November 18, 1983.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie (202 272–7677), Associate Director, Robert P. Wason (202 272–7649), Chief Financial Analyst, or James E. Lurie (202 272–7648), Special Counsel, Division of Corporate Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 5 of the Act requires that each registered holding company file an initial registration statement (Form U5B), including the subject matter itemized in paragraph (b) thereof, and Section 14 of the Act requires an annual report (Form U5S), directed) among other things, "to keep reasonably current the information filed under Section 5." Each of the registered holding companies is also a reporting company under Section 12 of the Securities Exchange Act of 1934 and files an annual report (Form 10–K) under that Act.[1] Most, but not all, of the

[1] The Commission terminated the use of various regulatory agency reports, including Form U5S, as a substitute for Form 10–K, April 27, 1977 (HCAR No. 20002).

important subsidiaries of registered holding companies also file corporate reports on Form 10–K. The utility subsidiaries also file annual reports with the Federal Energy Regulatory Commission or with the appropriate state commission, usually both.

The holding company's annual reports on Form 10–K provide consolidated information, which systematically eliminates the intercompany transactions and other structural details to which the Act is largely directed. But the company-by-company data is readily available, since it is the underlying data used to prepare the published consolidated statements. The report under the Act serves as a supplementary report, directed to the additional requirements of the Act.

The independent development of the two reports, however, has resulted in differences in form and detail which impede use of responses prepared for one form to satisfy essentially equivalent needs of the other. The proposed revision of the Form U5S is directed principally to eliminating such divergences.

Form U5S will incorporate by reference the Form 10–K of the parent holding company and of each subsidiary filing a Form 10–K. These incorporated forms will not be physically attached to the copy of the Form U5S which becomes part of the Commission's official files, to avoid multiplication of microfiches. For the same reason, the numerous documentary exhibits required by Section 5(b) of the Act and filed with the initial registration or filed to support subsequent applications or declarations, will continue to be incorporated by reference only.

It is proposed to replace most of the tabulations specified in the existing Form U5S. This will relieve the reporting companies of the burden of redoing in different form, for purposes of Form U5S, other voluminous information the substance at which is concurrently filed elsewhere with this Commission or other regulatory authorities. The proposed instruction permits the use of reproductions of pertinent portions of other reports with such annotations and additions as may be needed.

For data reported in detail to other commissions, such as series of first mortgage bonds or classified plant accounts, the substitution of a reproduction for a new tabulation should provide significant relief. The potential sources are too diverse to permit incorporation by reference so inclusion of the schedules in the report is required, and the use of data from other sources is optional. There will be cases in which collection and editing would be more trouble than preparing a new schedule.

It is proposed to simplify considerably the specific disclosure requirements with respect to officers and directors under Section 5(b)(2) of the Act by the use of the disclosure requirements, developed for the same purpose under the securities laws, as the measure of the "form and detail" required to be reported in Form U5S. Accordingly, the pertinent data contained in the company's current proxy statements (which are filed prior to the filing date for the Form U5S) and Form 10–K will be the response to proposed Item 6 (present Item 9). For this purpose the full disclosures made on those forms are required, although the data may and should be edited to reflect any material changes since original publication, to eliminate repetition, and to place related material together. The proposed form also requires inclusion of officers and directors of subsidiaries, such as wholly-owned subsidiaries, not covered by current reports under the securities laws, as though they had served in reporting companies. This change is directed primarily to assuring continuing consistency between the materiality of data required to be reported under the Act and the Commission's generally applicable requirements on these subjects.

As revised, Item 6 would continue to contain a complete table identifying the officers and directors of each system company and a table of exemptions claimed from Section 17(c) of the Act, neither of which is available from any other source.

The proposed revised form eliminates the existing Item 8, Holders of Capital Stock, and Item 12, Litigation, since the differences from the parallel requirements in the Form 10-K appear to be immaterial. Former Item 2 was rescinded in the 1977 amendment for the same reason. Item 6, Investment in Securities of System Companies, has been combined with Item 1, the list of subsidiaries, by relegating details of intercompany debt holdings to schedules, which may usually be extracted directly from the issuer's reports to other commissions. The number of items is thus reduced from 13 to 9, which are renumbered without change in order.

The other items in the report have been rewritten for clarity and to eliminate unnecessary detail. Several of these are directed to unusual or rare transactions and normally produce a negative answer. The revised general instructions emphasize that the report should not repeat the text or instructions. Broad exclusions have been transposed from the instruction to the beginning of the text, for emphasis, and the tabluar form, which appeared in virtually every item, has been deleted from most. Answers may be tabulated, and should be if numerous similar transactions are reported, but only proposed Items 1, 6, and 8 will ordinarily involve such answers.

Item 2 (present Item 3), Acquisitions or Sales of Utility Assets, deals only with utility facilities in place, acquired or disposed of in an exempt transaction. It has been revised to distinguish acquisitions which alter the system by (1) the acquisition or disposition of a retail service area, regardless of size, or (2) the transfer of a material (defined as $1 million) transmission or generation facility, from other transactions, such as pole line agreements. Only the first categories require individual identification.

Item 3 (present Item 4), Issue, Sale, Pledge, Guarantee, or Assumption of System Securities, also applies only to exempt transactions and is even less frequently applicable. It would be used to report short-term borrowings by a system company, whose budget requirements were so low that it relied during the year on the statutory 5% exemption under Section 6(b) of the Act rather than obtaining a higher authorized borrowing limit by order under the same section, and might be used for other special transactons, exempted by present or future rules. It would be anomalous to require more detail for transactions deemed too small or routine to warrant a declaration than is needed in the Rule 24 certificates for more important transactions of the same nature. The instructions provide for aggregate reporting in this item.

The number of transactions reported in Item 4 (present Item 5), Acquisition, Redemption or Retirement of System Securities, has proliferated over time, due largely to the multiplication of bond and preferred stock series and related sinking funds. It is proposed to limit the report to annual aggregates and relegate even the allocation of those aggregates to series or issues to schedules, which usually will be available from reports to other commissions.

Item 5 (present Item 6), Investment in Securities of Non-System Companies, is proposed to be revised to expressly authorize the reporting of temporary cash investments, defined in Rules 40(a)(1) and (2), in total only, and the reporting of small local investments in the aggregate.

The proposed revision to Item 7 (present Item 10), Contributions and Public Relations, recognized the tacit

amendment to Section 12(h) of the Act under the 1976 amendments to the Federal Election Campaign Act of 1971 [2] It deletes the present form's definition of political contribution and makes the Federal Election Commission's currently effective definitions and requirements at the time of the report the governing standard. It is also proposed to delete dues from Item 7. Contributions, public relations and dues, even when ordinary business expenses, have been widely excluded as part of the cost of service included in rates. The policies followed by state commissions on this subject vary, since some expenditures in these categories are sufficiently related to utility service to be allowable. Controversy as to the status of particular items is perennial, so segregation and itemized reporting of these expenses is a standard feature of utility accounting. The Commission's service company accounts and report follow the utility pattern, since the service company expenses are charged to the utility companies served.

Section 13(a) of the Act forbids the holding company to recover its expenses from its subsidiaries, so the itemization of small expenses in its annual report serves no purpose. Nor does a standardized report of those of its regulated subsidiaries, which report directly to the interested agencies under standards reflecting their particular policies. Certain other subsidiaries, which sell fuel or other products to the utility subsidiaries at cost, are not included in the service company annual report, but each has its own requirements, adapted to its particular activity. It thus appears that Form U5S is not suitable for a comprehensive itemized report of dues paid by system companies.

The deletion of this category from Item 7 does not, of course, relieve any system company of its obligation to comply with the reporting requirements of other agencies or this Commission's requirements under Rule 93 or under orders applicable to companies selling goods or services to associate companies. Material benefits of this kind are to be included in Item 6, and the designation of an expenditure in category (1), (2) or (3) of this Item as a membership fee or dues shall not exempt it from inclusion in those categories.

[2] Subsection (b)(2) of Section 441 b of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 441 b(b)(2), *inter alia*, excludes from the definition of "contribution" under the 1935 Act, the "establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes."

Item 8 (present Item 11), Service, Sales and Construction Contracts, provides current data on the service, sales and construction contracts, which are the subject of Section 5(b)(2)(F). The service company is excluded, because it reports separately under Section 14, and sales of electricity and gas, regulated by other commissions, are excluded pursuant to Section 2(a)(20). The item has been rewrtten to make the prescribed tabulation more flexible, particularly with respect to the unusual kinds of contracts covered by parts II and III.

Item 9 itself is a list of exhibits, most of which are to be incorporated by reference. The instructions for the financial statements include three changes. The present authorization to use large pages, folded to conform to the report size, now 8½"by 11", has been eliminated, because the difficulty of using such pages is accentuated by microfiching. The use of optically reduced copies, within the limits of legibility, is expressly authorized and the instructions provide other methods of coping with consolidating statements for more companies than a double page may accommodate.

The requirement that the elimination column be supported by details in journal entry form has been deleted. Most items in the elimination columns are self-evident and those which are not usually require more explanation than the present form provides. In practice, the need for such explanation arises only when some particular analysis is attempted, usually long after the filing of the form. Accordingly, the proposed instructions require the filing company to keep the journal entries with its copy of the form, so that supplementary explanation can be readily supplied if needed.

It is proposed to rescind the present requirement that the consolidating financial statements include company-by-company schedules to support enumerated consolidated schedules required in the form 10–K. The proposed instructions require reproductions of the classified plant schedules, and related depreciation and reserve schedules from the utility subsidiaries' reports to their utility commission, which are both more useful than the present schedules V and VI and require no preparation. The schedules, from the same sources, required in other items above, will similarly adequately replace the other schedules deleted.

Proposed Amendment to Rule 48(b)

Rule 48(b) provides an exemption from the requirement of Commission approval under Section 9(a)(1) of the Act for certain advances to employees. When the rule was revised in 1976, a limit of $10,000 per employee was set as the maximum exempted amount, with exclusions for certain current business related obligations and any loan or guarantee with respect to a first mortgage on a residence.[3] Paragraph (b)(3) also required disclosure in the Form U5S of each loan or guarantee of more than $10,000, excluding first mortgages on an employee's residence. Although no comments were made on the proposal, the Commission was informed, shortly after the amendment was adopted, that it was inadequate for the purpose for assisting employees in finding housing on transfer to another community. Subsequent increases in the cost of residences have aggravated the difficulties, which have been dealt with by order.

It is proposed to delete the dollar limit specified for advnces, as well as the requirement of an annual itemization of advances to officer not directors. The exemption will continue to be limited to advances made under a personnel policy of general application and to require that such policies contain appropriate dollar limits for various categories of assistance, a requirement made explicit by the proposed amendment. The exemption provided is thus limited to benefits generally available to employees, under personnel policies filed under the rule. It includes officers but not directors, as such. Other transactions with officers or directors, affiliates under the Act (Section 2(11)(c)), require specific authorization. Indebtedness within the rule's limits wil not be sufficiently material to justify itemization in the Form U5S.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Statutory Basis

The Commission proposes to amend 17 CFR Part 250 and adopt a revised Form U5S pursuant to the authority contained in sections 5(b), 9(c) and 14 of the Act, 15 U.S.C. 79e(b), 79i(c) and 79m.

[3] HCAR No. 19489 (April 15, 1976), 41 FR 17890, April 29, 1976.

List of Subjects in 17 CFR Parts 250 and 259

Accounting, Reporting and recordkeeping requirements Securities, Utilities.

Text of Proposed Amendments

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

In consideration of the foregoing, the Commission hereby proposes to amend Part 250, of Chapter II, Title 17, Code of Federal Regulations, and to adopt a revised Form U5S as set forth below. The text of Form U5S does not appear in the Code of Federal Regulations.

1. Paragraphs (b) (1), (2), and (3) of § 250.48 are proposed to be revised to read as follows:

§ 250.48 Certain exemptions in connection with appliance sales and loans to officers or employees.

* * * * *

(b)* * *

(1) If such transaction is made pursuant to a personnel policy of general application adopted in writing by the board of directors of such company, or by a committee or executive officer authorized by the board of directors so to act and communicated to the class of employees to which it applies; and does not cause the total amount of guarantees and loans of all companies in the holding-company system to or for the account of such employee, outstanding at the time of the transaction, to exceed the limits specified in the applicable personnel policy.

(2) The exemption also extends to securities or guarantees incident to bona fide advances to the employee for travel or other reimbursable expenses and current indebtedness of the employee for goods or services sold by the system companies in the ordinary course of business.

(3) Each company intending to avail itself of this exemption subsequent to the effective date of this rule shall file, as an exhibit or as an amendment to the system's annual report on Form U5S, a copy of such personnel policy.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

2. By revising the annual report on Form U5S to provide in full as follows:

Securities and Exchange Commission

Washington, D.C.

Form U5S Annual Report

For the year ended December 31, 19——, or fiscal year ended ———— Filed pursuant to the Public Utility Holding Company Act of 1935 by

---

(Name and address of each registered holding company in the system)

General Instructions

1. Use of Form

An annual report covering the preceding calendar or fiscal year shall be filed on Form U5S with the Commission on or before the first day of May in each year for each holding company registered pursuant to section 5 of the Public Utility Holding Company Act of 1935 ("Act"). Where a holding company system includes more than one registered holding company, a single report shall be filed on behalf of all registered holding companies in the system.

2. Formal Requirements

(a) Two copies of the report on this form, including the exhibits specified, shall be filed with the Commission. At least one of such copies shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division responsible for administering the Act.

Every amendment to tha annual report shall comply with the formal requirements governing an original annual report with respect to the number of copies filed, signature and similar matters. Each such amendment should be numbered and contain an index of the contents thereof.

(b) The annual report, and where practicable all documents filed as part thereof, shall be on good quality, unglazed white paper, 8½" x 11" in size. Tabulations may be placed either vertically or horizontally on a page, may utilize double pages, and may be reduced. All papers included in the annual report, except exhibits not especially prepared for such purpose, shall have a side margin of at least 1½" for binding, and each copy should be firmly bound on the left side.

(c) The report or any portion thereof may be prepared by any process. All copies shall be legible and suitable for repeated photocopying. Accordingly, items in tabulations which must be subtracted rather than added shall be distinguished in a manner which will not be obscured by bleak and white reproduction.

(d) The report shall contain the item number and caption of each item in the form, but shall omit all instructions and text. If any item is inapplicable or the answer thereto is negative, it shall be so stated. These items may be collected on a single page to economize on the space required. Information requested in tabular form shall be supplied in substantially the form indicated.

3. Incorporation by Reference

Incorporation by reference is permitted only where specifically provided in the form.

4. Information Unknown or Not Available

Information required need be given only insofar as it is known or can be obtained by the system company without unreasonable effort or expense. Omissions should be explained briefly.

5. Definitions

"Holding company system" or "system" as used in this form means the parent registered holding company together with all its subsidiary companies, including all subsidiary registered holding companies and all mutual service companies of which such registered holding company or any sibsidiary company thereof is a member company. A "system company" means any company in the holding company system. Unless the context clearly indicated the contrary, all terms used in this form and the instructions have the same meaning as in the Public Utility Holding Company Act of 1935 and in the rules and regulations issued thereunder.

6. Any system company may be identified elsewhere in the report by an abbreviation stated in Item 1.

7. The report is for the system's fiscal year and reference to the period covered mean that year. The form has been drawn for the calendar year almost universally used, by a system using a different fiscal year shall substitute the date of the end of its fiscal year for December 31.

Item 1. System Companies and Investment Therein as of December 31, 19—

Name of company (add abbreviation used herein)	Number of common shares owned	Percent of voting power	Issuer book value	Owner's book value

Instructions to Item 1

1. List the parent holding company and all statutory subsidiaries, direct or indirect, including registered holding companies, mutual service companies, inactive and nonutility companies and statutory subsidiaries which have pending applications for exemption. Inactive companies should be indicated by an asterisk (*).

2. Subsidiaries of a single subsidiary shall be listed under that subsidiary and identified as such by indentation or otherwise. Subsidiaries of more than one member company shall be identified by a footnote showing the owners, and the division of the investment, as tabulated, among such owners.

3. Noncorporate subsidiaries, such as a trust or partnership, shall be identified by a footnote, stating the form of organization and the form of equity investment, the amount of which shall be included in the tabulation as though it were common stock.

4. Subsidiaries added during the year shall be identified by footnote, stating the jurisdiction under the laws of which the subsidiary was organized, its date of organization, the date of acquisition, if different and briefly describing the business of the subsidiary. Changes in the status of an existing subsidiary during the year shall be identified in the same manner.

5. Voting power refers to the percentage of votes for the election of directors, as of the end of the year, without regard to voting rights which other classes of securities might have on hypothetical contingencies, such as dividend defaults. Applicable qualifications, such as other shareholders cumulative voting rights or special provisions for selection of directors (or equivalent representatives for trusts or partnerships) shall be stated briefly by footnote.

6. The line in the tabulation stating the company name shall show the common stock investment, or equivalent. Investments, if any, in other equity securities, in unsecured debt and in secured debt, shall be summarized, in aggregate amount, by those three categories, on additional lines under the company name. The book values specified refer to the investment, as defined in Rule 26, with respect to the owner, and the balance sheet amount with respect to the issuer, in both cases including applicable paid in capital and retained earnings.

To the extent convenient, the other investments may be described in the tabulation or by footnote. Investments consisting of numerous series, however, shall be described in schedules annexed to the Form U5S, which may be reproductions of issuer's schedules included in its reports to the Federal Energy Regulatory Commission, a state commission or this commission, with any needed additions or annotations. The description will include the principal amount, interest or dividend rate, and maturity date, and distinguish between the amounts owned within the system and those otherwise outstanding. The amount of arrears of dividends or interest, if any, excluding unmatured accruals will be sown.

Item 2. Acquisitions or Sales of Utility Assets

Excluding transactions reported in a certificate filed pursuant to Rule 24, provide a brief description of acquisitions or sales, if any, by each system company, of facilities in place, of any electric utility company or retail gas utility company for the production, transmission or distribution of electric energy or distribution of natural or manufactured gas, stating the name of the system company (both system companies if the transfer is within the system) the consideration, a brief description of the transaction, and the exemption claimed.

Instructions to Item 2

1. Transactions which have the effect of adding or disposing of a retail service area, and transactions which involve a consideration of more than one million dollars including reasonably estimated completion costs incurred or eliminated by transfer of facilities under construction, shall be described separately, and the description shall include the location. Other transaction may be aggregated by company into categories of the same general description. If the consideration for a category is not readily ascertainable, it may be estimated.

2. The exemption claimed shall be identified by reference to the Section of the act or rule relied on. If Section 9(b) is relied on, the State commission order shall be identified and a copy included as an exhibit.

3. This item is directed to utility facilities in place. Do not include disposal of abandoned or salvaged facilities, even if the purchaser is to effect the removal or conversion to non-utility use.

Item 3. Issue, Sale, Pledge, Guarantee or Assumption of System Securities

Excluding transactions reported in a certificate filed pursuant to Rule 24, or described in Item 2 as part of the consideration for an acquisition, and transactions of a subsidiary exempted as such under section 3(d) of the Act, provide a brief description of issuances, sales or pledges of securities of system companies or guaranty or assumption by system companies of securities of other persons, including system companies or exempted subsidiaries, stating the name of the issuer, the name of the system company if different, describing the securities, the date and form of the transaction, the consideration and the exemption claimed.

Instructions to Item 3

1. Recurrent transaction, such as short term borrowing exempted by Section 6(b) of the Act, shall be reported by system company in the aggregate, stating only the total balance of the end of the year, the highest balance during the year, with its date, and the effective average interest rate, including commitment fees and other charges of the lenders, for the year. If such borrowings were secured by pledge or lien, the security shall be described and the secured borrowings shall be stated in the same manner as specified above, but separately.

2. Pledges and guarantees incident to the procurement of surety bonds, workmen's compensation deposits and comparable obligations incurred in the ordinary course of the system company's business may similarly be reported in the aggregate, stating the balance at the end of the year and the highest amount outstanding during the year. Describe the purposes thereof and any consideration received by a system company, other than accomplishment of the purpose described by reimbursements for administrative costs of transaction.

3. Issuance and concurrent retirement of securities as a formal means of satisfying indenture or charter requirements need not be reported.

4. The exemption claimed shall be indicated be reference to the section of the Act or rule relied on.

Item 4. Acquisition, Redemption or Retirement of System Securities

Excluding short term debt reported in a certificate filed pursuant to Rule 24, or in Item 3, and transactions of a subsidiary exempted as such under Section 3(d) of the Act, provide a brief description of any system securities acquired, redeemed, or retired, stating the name of the issuer, the name of the system company acquiring or retiring the securities, if different, the consideration, whether the securities have been extinguished or are held for further disposition, and the authorization or exemption relied on.

Instructions to Item 4

1. Securities paid on maturity, or retired by sinking fund or otherwise pursuant to indenture or charter provisions or acquired in anticipation of such requirements pursuant to Rule 42(c)(4) or orders authorizing the issuance of redeemable perferred stock, and securities redeemed in a transaction reported in a certificate filed pursuant to Rule 24, shall be reported in the aggregate, by company, distinguishing only bonds, unsecured debt and preferred stock. Schedules shall be annexed to the report, which may be reproductions of the issuer's reports to the Federal Energy Regulatory Commission, a state commission or this Commission, with any needed additions or annotations, to identify the annual amount retired or acquired and consideration for each series or issue. Issuance and concurrent retirement of securities to formally satisfy indenture or charter provisions may be omitted, and only the aggregate consideration for each issue or series need be stated.

2. If the consideration consisted in whole or in part of other than cash, set forth separately the cash consideration, and the dollar amount of securities or other property. The dollar amount of securities should be states at the approximate book value thereof on the books of issuer as of the date of the transaction.

Other property should be stated at book cost on the books of the owner thereof immediately prior to the transaction.

3. If securities acquired in a prior year are retired in the year of the report, their retirement shall be reported.

4. Exemptions claimed shall be identified by reference to the section of the Act or rule, and authorization by reference to the Holding Company Act Release Number, except that reference to such number may be omitted with respect to redeemable preferred stock.

Item 5. Investments in Securities of Nonsystem Companies

For each system company, excluding subsidiaries exempted from regulation as such pursuant to Section 3(d), and securities representing obligations of customers incurred in the ordinary course of business, report as of the end of the year:

1. Aggregate amount of temporary cash investments acquired pursuant to Rule 40(a)(1) or (2).

2. Aggregate amount of investments in persons operating in the retail service area of the owner, or of its subsidiaries, and not exceeding $100,000 in each person. State the number of persons included and describe generally the kind of persons included.

3. With respect to securities owned not included in categories 1 or 2, state the name of the issuer, describe the securities, including number of shares and percentage of voting power as to equity securities, indicate the general nature of the issuer's business, and state the owner's book value of the investment.

Instructions to Item 5

1. The "person" whose securities are owned may be any form of entity, but for purposes of category 2, the amount of the investment shall be calculated on a consolidated basis including all persons known to be under common control, and all investments of the system in that person shall be aggregated.

2. Reports of the owner to the Federal Energy Regulatory Commission, a state commission or this Commission, with any necessary additions or annotations, may be annexed to the report to provide, in whole or in part, the information specified.

Item 6. Officers and Directors

Except for officers and directors of subsidiaries exempted under Section 3(d) of the Act:

Part I. As of December 31, 19——

1. List the names and principal business address of the officers and directors of all system companies as of the end of the calendar year.

2. Under the column for each system company, designate by appropriate symbols positions held in such company.

Names of System Companies with Which Connected					

Part II. With respect to each officer and director with a financial connection within the provisions of Section 17(c) of the Act, show:

Name of officer or director	Name and location of financial institution	Position held in financial institution	Applicble exemption rule
(1)	(2)	(3)	(4)

This information may be included in the Part I tabulation, if feasible.

Part III. State the disclosures made in each system company's most recent proxy statement and annual report on Form 10–K with respect to:

(a) The compensation of directors and executive officers of system companies;

(b) Their interest in the securities of system companies including options or other rights to acquire securities;

(c) Their contracts and transactions with system companies;

(d) Their indebtedness to system companies;

(e) Their participation in bonus and profit-sharing arrangements and other benefits;

(f) Their rights to indemnity.

If any executive officers or directors of system companies are not included in the specified reports under the Securities Exchange Act of 1934, provide the same information, as though the company with which they serve were required to file a proxy statement and Form 10–K under that Act.

Instructions to Item 6

1. The data specified shall be physically in the report and shall be substantially the same, without omission, as that reported under the securities laws. It may be edited to eliminate repetition or duplication and to put related information together. If officers and directors participate in benefits of more general application and the filings referred to rely on cross reference to a general description of the benefits, that description may be edited to eliminate irrelevant aspects. Contracts, documents and other exhibits may be incorporated by reference. Any material change after the date of publication of the source report shall be noted in Item 6.

2. The proxy statement and Form 10–K for the report year will ordinarily be filed before the filing date specified for the Form U5S. If the filing of one or more of those reports is delayed for any reason, the data therefrom specified in Item 6 shall be omitted and filed by amendment concurrently with the filing of the delayed report.

3. The term "executive officer" shall mean an executive officer as defined in the rules under the Securities Act of 1933 (17 CFR § 230.405) as that rule may be amended or replaced.

Item 7. Contributions and Public Relations

Excluding any service company filing an annual report on Form U–13–60, and any subsidiary exempted as such under Section 3(d), state, for the parent holding company and for each subsidiary, the expenditures, disbursements or payments during the year, in money, goods or services, directly or indirectly to or for the account of:

(1) any political party, candidate for public office or holder of such office, or any committee or agent therefor; or

(2) any citizens group, or public relations counsel; or

(3) for any charitable, social or community welfare program identifying the total paid to or for the account of each ultimate beneficiary during the year, the purpose of the payment and the account of the company to which it was charged, except that total payments to an ultimate beneficiary of less than $3,000 during the year in categories (2) or (3) for similar purposes, may be aggregated by stating the number of beneficiaries, the purposes and the account charged.

Instructions to Item 7

1. The current definitions and regulations of the Federal Election Commission shall be followed in determining the extent to which expenses incurred by the company or its employees or agents with respect to political action committees or other activities, whether Federal or local, should be included in the amounts to be reported in category 1. The reporting company's applicable accounting policies will be followed in including incidental expenses or overhead in the other categories.

2. Each reporting subsidiary shall supply the parent holding company with its Item 7 report, signed by the officer of the subsidiary responsible for its accounts and records. The parent holding company shall keep these reports with its copy of the Form U5S.

Item 8. Service, Sales and Construction Contracts

Excluding contracts for the purchase, sale or interchange of electricity or gas, transactions included in the annual report on Form U–13–60 of a service company, and the sharing of costs of jointly owned facilities or jointly employed personnel:

Part I. Furnish the information required by the following table as to contracts for services, including engineering or construction services, or goods supplied or sold by a system company to another system company, and state, in the tabulation or by footnote, the date of the contract and whether it remained in effect at year end.

Nature of transaction	Selling company	Receiving company	Compensation

Part II. Does any system company have a contract to purchase services or goods from any affiliate (other than a system company), or from a company in which any officer or director of the receiving company is a partner or owns 5 percent or more of any class of equity securities? If the answer to Part II is yes, and the contract has not already been reproted in Item 6, report such contracts in substantially the same detail as specified for Part I, also describing the affiliation.

Part III. Does any system company employ any other person for the performance on a continuing basis of management, supervisory or financial advisory services?

If the answer to Part III is yes, state the name of each such person, describe the contract, and the scope of the services and the annual consideration.

Instructions to Item 8

1. Similar and related transactions between the same companies should be aggregated into annual totals.

2. The tabulation may omit: (a) one or more contracts if the aggregate consideration passing between the same companies is less than $100,000, and a general description of the omitted kinds of contracts is given; (b) utility service exempted by Rule 81, and (c) the non-recurrent transactions exempted by Rule 85; or Rule 87 (a)(3) and (b)(2), (4) or (5).

3. A purchase of goods or services by a system company necessarily involves an agreement as to price and terms between buyer and seller, whether expressed or implied. The reference to the contract in the text is not an exemption of informal or tacit agreements for continuous or recurrent transactions, which are expressly prohibited by Rules 84 and 86, with the limited exceptions made by Rules 85 and 87.

4. Jointly owned facilities are facilities, such as a generating plant, owned as cotenants by two or more associate companies which receive the output of such facilities for their respective use, and jointly employed personnel and employees or independent contractors concurrently working for and separately compensated by their respective employers. The exception does not apply to use of facilities or employees of one company to render services to an associate company for a charge, even if limited to a calculated cost reimbursement.

Instruction 2, however, may permit omission of some such contracts.

Item 9. Financial Statements and Exhibits

List all financial statements and exhibits filed as a part of this annual report.

Financial Statements

Consolidating financial statements for the parent holding company and each of its subsidiaries for the year of the report, including a balance sheet, income statement, statement of retained earnings and statement of changes in financial position. The plant and related depreciation and amortization accounts shall be supported by classified schedules as prescribed below. The individual financial statements shall be those included in the audited consolidated financial statements reported for the same year in the form 10–K or annual reports to shareholders incorporated therein and in substantially the same form. They shall be reconciled to said consolidated financial statements by an elimination column, the entries in which shall be keyed to identify by item, offsetting debits and credits.

Exhibits

Exhibit A. The report shall incorporate by reference the annual report of each system company filed for the same year under the Securities Exchange Act of 1934. A copy of such reports including annual reports to shareholders incorporated therein shall be included in the duplicate copy of the Form U5S addressed to the Division administering the Act, but not in the filed copy. Exhibits B and C may also be incorporated by reference.

Exhibit B. With respect to the parent holding company and each subsidiary company thereof, a copy of the charter, articles of incorporation, trust agreement, voting trust agreement, or other fundamental document of organization, and a copy of its by-laws, rules and regulations, or other instruments corresponding thereto. If such documents do not set forth fully the rights, priorities and preferences of the holders of each outstanding class of capital stock and those of the holders of any warrants, options or other rights to acquire capital stock, and of any limitations on such rights, there shall also be included a copy of each certificate, resolution or other document establishing or defining such rights and limitations. Each such document shall be in the amended form effective at the date of filing of the report or shall be accompanied by copies of any amendments to it then in effect.

Exhibit C. (a) With respect to each outstanding class of funded debt, a copy of the indenture or other fundamental document defining the rights of the holders of such security, and a copy of each contract or other instrument evidencing the liability of the parent holding company or a subsidiary company thereof as endorser or guarantor of such security. Include a copy of each amendment of such document and of each supplemental agreement, executed in connection therewith. If there have been any changes of trustees thereunder, such changes, unless otherwise shown, should be indicated by notes on the appropriate documents. No such indenture or other document need be filed in connection with any such issue if the total amount of securities that are now, or may at any time hereafter, be issued and outstanding thereunder does not exceed either $1,000,000 or an amount equal to 10% of the total of the debit accounts shown on the most recent balance sheet of the company which issued or guaranteed such securities or which is the owner of property subject to the lien of such securities, whichever of said sums is the lesser.

(b) As to each outstanding and uncompleted contract or agreement entered into by the parent holding company or any subsidiary company thereof relating to the acquisition of any securities, utility assets (as defined in Section 2(a)(18) of the Act), or any other interest in any business, submit a copy of such contract or agreement and submit details of any supplementary understandings or arrangements that will assist in securing an understanding of such transactions.

Exhibit D. A copy of the tax allocation agreement for the year of the report pursuant to Rule 45(c).

Exhibit E. Copies of other documents prescribed by rule or order, such as Rule 48(b), for incorporation into the annual report.

Exhibit F. Schedules supporting items of the report.

Instructions for Financial Statements

1. The opinion of the independent accountants as to the consolidated financial statements and the footnotes to such statements shall be included in Form U5S. The opinion need not extend to the components of the consolidating statements.

2. If the statements of certain companies are customarily omitted from the consolidated statements of the registrant and its subsidiaries, the statements of such companies may be omitted from the

consolidating statements required herewith, if statements for such companies are annexed.

3. In the balance sheets, equity securities which are minority interests in the consolidated balance sheet, shall be shown separately from equity securities, even of the same class, which are eliminated in consolidation.

4. The consolidating financial statements may be divided into subgroups in order to adjust the number of columns needed on a page or facing pages. In such groupings, consolidations shall first be effected for each group consisting of a subsidiary and companies all of whose common stock is owned directly or indirectly by that subsidiary. Other inactive subsidiaries may be combined as a single group, and all of the financial statements of that group may be included on a single page. Further groupings shall combine companies with similar businesses.

5. The elimination column need not be supported by a recapitulation of the items in journal entry form, but such entries, in a form which will permit identification of the source by company of each elimination shall be kept with the parent holding company's copy of the Form U5S.

6. Utility plant accounts, including for the purpose of this instruction a natural gas company under the Natural Gas Act or any company regulated as a utility under state law, shall be supported by reproductions of the classified plant accounts included in the annual report of such company to its utility commission, and the related depreciation or amortization reserve schedules, together with any such schedules of other property or investments.

Signature

Each undersigned system company has duly caused this annual report to be signed on its behalf by the undersigned thereunto duly authorized pursuant to the requirements of the Public Utility Holding Company Act of 1935. The signature of each undersigned company shall be deemed to relate only to matters having reference to such company or its subsidiaries.*

Date———

By———

(Signature and printed name and title of signing officer)

By the Commission.

Dated: September 22, 1983.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to 17 CFR Part 250, and proposed revised Form U5S under the Public Utility Holding Company Act of 1935 set forth in Holding Company Act Release No. 35–23068, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments deal with annual reports filed with the Commission by registered holding companies, and exemptions concerning certain loans to employees by these companies. The reason for this certification is that the proposed amendments will not affect a substantial number of small entities. There are presently 13 registered holding companies. None of these companies is a small entity as defined in Rule 110 under the Holding Company Act (17 CFR § 250.110). Thus the proposal will not affect any small entities.

Dated: September 22, 1983.

John S. R. Shad,

Chairman.

[FR Doc. 83-26460 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

*Where the annual report is being filed on behalf of more than one system company, there shall be a separate signature for each such company by its authorized officer.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Permanent State Regulatory Program of Alabama

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by Alabama to satisfy certain conditions imposed by the Secretary of the Interior on the approval of the Alabama State program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of a set of modifications to Alabama's surface and underground coal mining statute and regulations, and is intended, in part, to satisfy most of the State's conditions of approval.

These conditions relate to specific program requirements in the areas of permitting, performance standards, public participation, inspection and enforcement. The specific conditions proposed to be met by the State are discussed in detail below under **SUPPLEMENTARY INFORMATION.**

Alabama has also requested an extension of the deadline to meet other conditions of approval which relate to sedimentation pond design, criteria for disposal of coal processing waste and placement of spoils and other performance standards related to head-of-hollow and valley fills.

In addition, Alabama has submitted other program amendments that are unrelated to the conditions of approval. Additional information about these amendments can be found below under **SUPPLEMENTARY INFORMATION.**

This document sets forth the times and locations that the Alabama program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and information pertinent to the public hearing.

DATES: Written comments relating to Alabama's proposed modification of its program not received on or before 4:00 p.m. on October 28, 1983, will not necessarily be considered in the Secretary's decision on whether the proposed program amendment satisfies the above conditions and meets the requirements of SMCRA and the Federal rules.

If requested, a public hearing will be held on October 24, 1983, beginning at 10:00 a.m. at the location shown below under **ADDRESS.**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209.

If a public hearing is held, its location will be: Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program, the Secretary's notice conditionally approving the Alabama program (together with the Secretary's findings), a listing of any scheduled public hearing or meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining, Room 5315, 1100 L Street, NW., Washington, D.C. 20240.

Office of Surface Mining, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than Birmingham, Alabama, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business three working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

II. Background on Conditional Approval

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with the steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval.

III. Background on the Alabama Program

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at FR 22020–22038 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

At the time of the Secretary's conditional approval, Alabama agreed to meet 13 conditions, many of which contained more than one element. Briefly, these conditions are:

1. Condition (a) requires Alabama to provide for the award of attorney and expert witness fees in accordance with Section 520(f) of SMCRA.

2. Condition (b)(1) requires Alabama to limit the definition of "extraction of coal as an incidental part" to only those areas included in the Federal definition.

3. Condition (b)(2) requires Alabama to redefine "Historic Lands" to include properly designated sites of religious, cultural and historic significance.

4. Condition (c) requires Alabama to change the term "unnecessarily disturbed" to "significantly disturbed" in order to provide sufficient protection for wildlife habitats.

5. Condition (d) (1) requires Alabama to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds.

6. Condition (d) (2) requires Alabama to provide for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)–(u) and 817.46(e)–(u).

7. Condition (d) (3) requires Alabama to limit impoundment slopes to not greater than 1v:2h.

8. Condition (d) (4) requires Alabama to provide for the inspection of all appropriate dams in accordance with 30 CFR 77.216–3.

9. Condition (d) (5) requires Alabama to provide for minimum sediment storage volume for sedimentation ponds.

10. Condition (e) (1) requires Alabama to prohibit the disposal of coal processing waste in head-of-hollow and valley fills.

11. Condition (e) (2) requires Alabama to provide for the placement of spoil in four foot horizontal lifts unless otherwise authorized by the regulatory authority.

12. Condition (e) (3) requires Alabama to provide criteria for slopes greater than 36 percent.

13. Condition (e) (4) requires Alabama to provide criteria and requirements for head-of-hollow and valley fills in a manner no less effective than 30 CFR 816.72 and 816.73.

14. Condition (f) (1) requires Alabama to limit blasting periods to an aggregate of four per day.

15. Condition (f) (2) requires Alabama to limit maximum peak particle velocity to one inch per second at the locations of certain structures and to adjust the scaled distance factor and accompanying tables accordingly.

16. Condition (g) (1) requires Alabama to provide that permit applications contain the identification of the current use of buildings on maps and plans.

17. Condition (g) (2) requires Alabama to provide that permit applications contain sufficient slope measurements to adequately represent the existing land surface configuration.

18. Condition (g) (3) requires Alabama to provide that permit applications contain information concerning equitable owners of record found in a standard title search of the standard chain of title.

19. Condition (h) (1) requires Alabama to provide mandatory authority for the regulatory authority to provide to the public information on acid and acid-forming materials in the coal seam.

20. Condition (h) (2) requires Alabama to grant to the regulatory authority, rather than the operator, the discretionary power to determine the confidentiality of information relative to exploratory activities, and containing specific criteria for such determination.

21. Condition (i) requires Alabama to provide that the applicant must demonstrate that the use of existing structures wil not result in significant harm to the environment or impair public health or safety.

22. Condition (j) requires Alabama to provide for the permitting of coal processing plants and other support facilities including those not at or near the mine site.

23. Condition (k) requires Alabama to provide for the meeting of all three conditions contained in 30 CFR

785.18(d)(9) prior to the granting of a variance.

24. Condition (1) requires Alabama to grant authorized representatives the power to and requiring that the authorized representatives shall impose affirmative obligations on the operator in situations of imminent danger or significant environmental harm or when an operator fails to abate the violation in the most expeditious manner physically possible.

25. Condition (m) requires Alabama to make certain editorial changes to its rules as follows:

(m)(1): In the definition of Federal Lands, insert "interest" after "mineral".

(m)(2): In the definition of "Groundwater" substitute "in" in lieu of "below".

(m)(3): Add a scope section to Alabama rule Part 823 (now redesignated as 880–X–10G–.01).

(m)(4): Remove the word "following" from section 823.15 (now redesignated as 880–X–10G).

(m)(5): Add appropriate references in Sections 816.46(u) and 817.46(u) (now redesignated as 880–X–10G and 880–X–10D).

(m)(6): Correct the reference at section 778.13(d) (now redesignated as 880–X–D).

IV. Discussion of the Proposed Amendment

On August 29, 1983, the Alabama Surface Mining Commission (ASMC) transmitted a set of statutory and regulatory amendments intended to meet most of its conditions.

Alabama has:

(1) proposed changes to its statute at Section 3 of Act 83–744 (Section 9–16–95(f) of the Alabama Code) to meet condition (a);

(2) proposed changes to rules 2A–.06 (xx) to meet condition (b)(1); proposed changes to rule 2A–.06 (www)(5) to meet condition (b)(2);

(3) proposed changes to rule 10B–.06(A) to meet condition (c);

(4) proposed changes to rules 10C–.30 through .35 and 10D–.28 through .32 to meet conditions (f)(1) and (f)(2);

(5) proposed changes to rules 8F–.08(d) and 8I–.07(d) to meet condition (g)(1);

(6) proposed changes to rules 8F–.08(p) and 8I–.07(p) to meet condition (g)(2);

(7) proposed changes to rules 8D–.05(1)(b) and 8G–.05(1)(b) to meet condition (g)(3);

(8) proposed changes to rule 8K–.05(4)(a) to meet condition (h)(1);

(9) proposed changes to rule 8C–.09 to meet condition (h)(2);

(10) proposed changes to rules 8K–.12(1)(a) and (b) to meet condition (i);

(11) proposed changes to rules 8J–.11 and Chapter 10J to meet condition (j);

(12) proposed changes to rule 8J–.09(4)(i) to meet condition (k);

(13) proposed changes to rules 11C–.02(1)(b) to meet condition (1);

(14) proposed changes to rules 2A–.06(yy), 2A–.06(fff), 10G–.01, 10G–.07, and 8D–.05(4) to meet conditions (m)(1), (m)(2), (m)(3), (m)(4) and (m)(6), respectively.

Alabama has requested an extension until December 1, 1983, to meet conditions (d), (e) and (m)(5). The rationale for this request is to enable the State to reflect changes expected to be made soon to the Federal rules in the areas of sedimentation ponds, other impoundments, and excess spoil.

In addition, Alabama has proposed changes to other statutory and regulatory sections that are unrelated to the conditions. These provisions are:

1. Changes to Section 9–16–93(f) of Alabama's Code which places jurisdiction for relief in the District Courts of the State by placing jurisdiction in the Circuit County of the State.

2. Changes to Section 9–16–94(a) of Alabama's Code which provides for mandatory assessment of civil penalties upon the issuance of cessation orders under Section 9–16–96(a) to correctly read Section 9–16–93(a).

3. Changes to Section 9–16–99(2) of Alabama's Code which provides for waiver of certain requirements on surface mining areas affecting two acres of less.

4. Changes to Section 9–16–75 of Alabama's Code relating to rulemaking procedures by providing that provisions of the Alabama Surface Mining Control and Reclamation Act (ASMCRA) shall take precedence over the provisions of the Alabama Administrative Procedure Act, and providing for an emergency rulemaking procedure.

5. Changes to Section 9–16–79(1)(a) of Alabama's Code relating to hearings and appeals by providing that the provisions of ASMCRA shall take precedence over the Alabama Administrative Procedure Act as related to hearings and appeals.

6. Changes to Section 9–16–87(d) of Alabama's Code relating to exploration permits by providing for a reclamation bond.

7. Changes to Section 9–16–89(h) of Alabama's Code to clarify conditions for obtaining release of bonds.

8. Changes to Section 9–16–90(b)(10)(b.1) of Alabama's Code to clarify performance standards regarding the control of suspended or settleable solids.

9. Changes to Section 9–16–92(a) of Alabama's Code which add a provision authorizing entry on private land in the enforcement and administration of ASMCRA.

10. Changes to Section 9–16–94(e) of Alabama's Code by making willfully and knowingly engaging in surface coal mining operations without a license or a permit a criminal act and subject to criminal penalties, and further providing for reclamation bond and reclamation of any land so affected.

11. Changes to Section 9–16–105(a) of Alabama's Code to provide for the conformity of Federal and State laws and regulations.

12. Changes to Alabama rule 880–X–2A–.06 to add the extraction of coal from coal refuse piles to Alabama's definition of surface coal mining operations.

13. Changes to Alabama rule 880–X–5A–.02 by adding a new paragraph (i) providing for hearings relating to any aspect or matter in the administration and enforcement of surface coal mining and reclamation activities which occurred under the Alabama Surface Mining Act of 1969 and ASMCRA to be included under the jurisdiction of Alabama's Division of Hearings and Appeals.

14. Changes to Alabama rule 880–X–5A–.17(1)(n) concerning powers of hearing officers to enable them to issue appropriate orders relating to Service of Process or any other service of the regulatory authority or the division of Hearings and Appeals.

15. Changes to Alabama rule 880–X–5A–.36 to provide that the Division of Hearings and Appeals shall be subject to the Alabama Rules of Civil Procedures.

16. Changes to Alabama rule 880–X–5A–.18 to prohibit ex parte contacts between representatives of the parties and the hearing officer.

17. Changes to Alabama rules 880–X–8E–.06(2) and 8H–.06(2)(a) to require that the geology description included in a permit application be prepared by a professional geologist or a qualified registered professional engineer.

18. Changes to Alabama rules 880–X–8E–.06(5)(a) and 8H–.06(5)(a) to require that the determination of hydrologic consequences included in a permit application be prepared by a hydrologist.

19. Changes to Alabama rules 880–X–8F–.07(1)(p) prescribing requirements for the blasting plan included in a permit application.

20. Changes to Alabama rules 880-XF-.07(2) and 8I-.07(2) specifying the requirements for permit maps. Under the proposed change, maximum map size shall be 30 x 42 inches, at a scale of no more than 1 inch = 500 feet. Other scales could be approved on a case-by-case basis by the State regulatory authority.

21. Changes to Alabama rules 880-XF-.07(2)(f) and 8I-.07(2)(f) concerning map legends where all symbols and representations including each bond increment and acreage would be required to be clearly identified.

22. Changes to Alabama rules 880-XF-.09(2)(e) and 8I-.08(2)(e) concerning reclamation plan requirements to amend the reference to Alabama's revegetation rules.

23. Changes to Alabama rules 880-XG-.05(4) concerning permit application requirements for the identification of current or previous coal mining permits to clarify the reference to other provisions of the Alabama rules.

24. Changes to Alabama rule 880-X-8I-.09 concerning underground development waste to amend the reference to the Alabama rules governing structures.

25. Changes to Alabama rules 880-X-8N-.07-.09 and .13 concerning the small operator assistance program.

26. A new rule 880-X-10A-.30 entitled "Authorization to Mine" which provides that a copy of all valid permits and other authorizations to operate the mine required by State law shall be available for inspection at or near the mine site.

27. Changes to rules 880-X-10C-.64(3) and 10D-.62(3) concerning temporary cessation of operations to clarify that interruption of operations due to events of force majeure, including strikes, shall not be considered a temporary cessation.

Thus, the Secretary requests comments on the substantive adequacy of the proposed amendment to satisfy the conditions listed above and on the substantive adequacy of the proposed changes to the other Alabama program provisions. The Secretary also requests comments on whether the extension of time to meet conditions (d), (e), and (m)(5) should be granted.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

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

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

Dated: September 23, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-26451 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

Reopening of Public Comment Period on Modified Portions of the North Dakota Permanent Regulatory Program

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

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: OSM is announcing the reopening of the public comment period on the adequacy of modifications to the North Dakota permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program revisions submitted by North Dakota for OSM's approval are intended to satisfy condition "f" of the Secretary's approval of the North Dakota permanent program, pertaining to the regulation of coal exploration operations. OSM is reopening the comment period to allow the public an opportunity to review the program modifications submitted by the State in light of recent changes to the Federal rules governing coal exploration activities. The Federal Act and regulations are the standard for approval of amendments to State programs under SMCRA.

DATE: Written comments must be received on or before 4:00 p.m. on October 13, 1983, to be considered in the Secretary's decision to approve or disapprove the proposed amendments.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. William Thomas, Field Office Director, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, Mills, Wyoming 82644.

Copies of the proposed modifications to the North Dakota program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Casper, Wyoming Field Office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street, NW., Washington, D.C. 20240;

Office of Surface Mining Reclamation and Enforcement, Field Office, Freden Building, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 328-5830;

Public Service Commission, Reclamation Division, Capitol Building, Bismarck, North Dakota 58505; Telephone: (701) 224-2400.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Field Office Director, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 328-5830.

SUPPLEMENTARY INFORMATION: The North Dakota program was conditionally approved under SMCRA on December 15, 1980 (45 FR 82241-82248). The Secretary's approval was conditioned on the State's correction of 13 minor deficiencies in its program by July 1, 1981. That deadline was later extended, upon the State's request, to January 1, 1983 (46 FR 54070-4071).

On July 30, 1982, North Dakota submitted proposed statutory and regulatory program changes for OSM's approval. The proposed amendments included modifications of Section 38-12.1-03 of the North Dakota Century Code (NDCC) which were intended to address condition "f" of the Secretary's approval of the State program.

Condition "f" stipulates that North Dakota must submit to the Secretary copies of fully enacted regulations

extending coverage of North Dakota's exploration program as defined in NDCC 38-12.1-03 to include "environmental data gathering operations."

On September 10, 1982, OSM announced receipt of the modifications in the **Federal Register** (47 FR 39868-39871) and scheduled a 30 day comment period on the proposed revisions. The comment period closed on October 12, 1982.

At the time of OSM's receipt of the amendment package, OSM was contemplating changes to the Federal coal exploration regulations. Because OSM was contemplating these changes to the Federal rules, which, together with the Act, are the standard for approval of amendments to State programs under SMCRA, the Secretary decided to defer his final determination on the adequacy of North Dakota's amendment in meeting condition "f" until changes to the Federal rules had been finalized. On February 9, 1983, the Secretary announced his decision to defer action and extended the deadline for the State to satisfy the condition until July 1, 1983. At that time, OSM anticipated that final revisions to the Federal coal exploration regulations would be promulgated prior to July 1, 1983. The Federal rule changes were not issued by the date originally expected. Hence, North Dakota requested and was granted by the Secretary a further extension of the deadline to meet condition "f" until October 1, 1983 (48 FR 43324, September 23, 1983).

On September 8, 1983, OSM promulgated final changes to the Federal regulations governing coal exploration at 30 CFR 700, 701, 722, 776 and 815 (48 FR 40622-40636). Therefore, the Secretary is reopening the comment period on the amendments to Section 38-12.1-03 of the North Dakota Century Code submitted to OSM by North Dakota on July 30, 1982. This additional comment period will enable the public to review the State's July 30, 1982 submission in light of the recently promulgated Federal rule changes.

OSM is seeking comment on whether the revisions submitted by North Dakota are consistent with the Federal Act and no less effective than the Federal coal exploration regulations as revised September 8, 1983, and whether the amendments satisfy condition "f" of the Secretary's approval of the North Dakota program, listed at 30 CFR 934.11(f).

The State amendments are contained in the North Dakota administrative record under number ND 182.

List of Subjects in 30 CFR Part 934

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

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

Dated: September 22, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 83-26452 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 17 and 227

Endangered and Threatened Wildlife and Plants

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Reopening of comment period.

SUMMARY: In their notice of a proposed rule to amend the Special Rule for sea turtles under the Endangered Species Act to allow transshipment of certain green sea turtle products through the port of Miami (48 FR 20098, May 4, 1983), the Services invited comments for a 30-day period ending June 3, 1983.

The Services are aware of discussions between interested non-government parties concerning this proposed rule. Because the Services are interested in receiving and considering any new or additional comments or information on this matter, this notice provides a 10 day opportunity for further public input.

DATE: Comments on this proposal must be received by October 11, 1983.

ADDRESSES: Please address correspondence to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203, or the National Marine Fisheries Service, Office of Marine Mammals and Endangered Species, U.S. Department of Commerce, Washington, D.C. 20235. Comments received will be available for review during the hours of 7:45 a.m. to 4:15 p.m., Monday through Friday except holidays at the Federal Wildlife Permit Office in Room 601, 1000 N. Glebe Road, Arlington, Va.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Va. 22203 (703/235-1937) or Mr. Charles Karnella, National Marine Fisheries Service, Office of Marine Mammals and Endangered Species, U.S. Department of Commerce, Washington, D.C. 20235 (202/634-7471).

List of Subjects

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (Agriculture).

50 CFR Part 227

Threatened fish and wildlife, Regulation promulgation.

Dated: September 22, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: September 22, 1983.

William G. Gordon,

Assistant Administrator for Fisheries.

[FR Doc. 83-26394 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 189
Wednesday, September 28, 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.

ACTION

Information Collection Request Under Review by OMB

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collect of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents) may be obtained from the agency clearance officer.

Information About This Proposed Collection: Agency Clearance Officer—William W. Lovelace, 202–634–9310.

Agency Address: ACTION, 806 Connecticut Ave., N.W., Washington, D.C. 20525.

Office of ACTION Issuing Proposal: Office of Financial Affairs/Comptroller.

Title of Form: Application Federal Assistance.

Type of Request: Extension (no burden change).

Frequency of Collection: On Occasion.

General Description of Respondents: State and local governments; non-profit organizations.

Estimated Number of Annual Responses: 2,200.

Estimated Annual Reporting or Disclosure Burden: 17,600 hours.

Respondent's Obligation to Reply: Required for obtaining benefit.

Person responsible for OMB Review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83-26453 Filed 9-27-83; 8:45 am]

BILLING CODE 6050-01-M

Information Collection Request Under Review by OMB

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents] may be obtained from the agency clearance officer.

Information about this proposed collection: Agency Clearance Officer—William W. Lovelace, 202–634–9310

Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, D.C. 20525.

Office of ACTION issuing proposal: Office of Financial Affairs/Comptroller.

Title of Form: Financial Status Report.

Type of Request: Extension (no burden change).

Frequency of Collection: Quarterly.

General Description of Respondents: State and local governments; non-profit organizations.

Estimated Number of Annual Responses: 6000.

Estimated Annual Reporting or Disclosure Burden: 18,000 hours.

Respondent's Obligation to Reply: Mandatory.

Person responsible for OMB Review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83-26454 Filed 9-27-83; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

September 16, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person. Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250; (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Economic Research Service

Distributional Effects of Rural Economic Development
Non-Recurring
Individuals of Households, State or Local Governments, Businesses: 2,413 responses; 1,947 hours not applicable under 3504(h)
John A. Kuehn (314) 276-5343

Revised

• Farmers Home Administration
7 CFR 1942 A, Community Facility Loans
440-11, 440-24, 442-2, 3, 7, 8, 9, 20, 21, 22, 28, 30, 46-47, 1942-19
On Occasion, Quarterly, Annually
State or Local Governments 95,426 responses; 237,654 hours not applicable under 3504(h)
Wallis McArthur (202) 382-9586

• Animal and Plant Health Inspection Service
Animal Welfare (Reports)
VS 18-3, 18-6, 18-11, 18-23
On Occasion, Annually
Businesses: 7,632 responses; 2,967 hours; not applicable under 3504(h)
Dr. W.C. Stewart (301) 436-7833

• Forest Service
Forest Industries Data Collection System
Annually
Businesses or Other For-Profit: 2,256 responses; 1,689 hours; not applicable under 3504(h)
Robert Nevel (215) 461-3037

• Agricultural Marketing Service
PIK Cotton—Collecting Handler Report
Monthly
Businesses: 32,200 responses; 5,290 hours; not applicable under 3504(h)
Vernon Burkholder (202) 447-3082

Revised

• Agricultural Cooperative Service
Kentucky Farm Women and Agricultural Cooperatives
Non-Recurring
Individuals or Households, Farms, Small Businesses: 1,826 responses; 1,370 hours; not applicable under 3504(h)
Dr. Thomas Gray (202) 447-9332

Extension

• Forest Service
Application for Permits Non-Federal Commercial Use of Roads Restricted by Order
FS-7700-40 State or local Governments, Farms, Businesses or Other For-Profit, and Small Businesses or Organizations: 2,000 responses; 500 hours; not applicable under 3504(h)
Dave Badger (703) 235-3122

• Forest Service
Grazing Permit Administration Forms
FS-2200-1, 2, 12, 13, 15, 16, 17; R-1-2230-5; R-2-2200-6; 02-2200-24; R-8; R-3-2200-1; 2200-1 cpo
On Occasion
Farms: 6,700 responses; 2,705 hours; not applicable under 3504(h)
Robert Storch (703) 235-8139

Dewayne E. Hamilton,

Acting Department Clearance Officer.

[FR Doc. 83-26363 Filed 9-27-83; 8:45 am]

BILLING CODE 3410-01-M

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Public Law 96-177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1983 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. As published on December 30, 1982 (47 FR 58328), the estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1983 is 1,119 million pounds.

2. The fourth quarterly estimate of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1983 is 1,230 million pounds.

Done at Washington, D.C. this 23rd day of September, 1983.

John R. Block,

Secretary.

[FR Doc. 83-26439 Filed 9-23-83; 4:16 pm]

BILLING CODE 3410-10-M

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the fourth calendar quarter of 1983.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-447-6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4940, dated May 5, 1982, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the fourth calendar quarter of 1983 is 21.17 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the fourth calendar quarter of 1983 has been calculated to be 22.5200 cents per pound. This results in a fee of 0.00 cent per pound for item 956.15, since the adjusted average spot price is greater than 21.17 cents. Accordingly, the fee for items 956.05 and 957.15 for the fourth calendar quarter of 1983 is 1.00 cent per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and

announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the fourth calendar quarter of 1983 shall be as follows:

Item	Fee (cents per pound)
956.05	1.00
956.15	0.00
957.15	1.00

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iv) of Headnote 4.

Signed at Washington, D.C. on September 23, 1983.

John R. Block,

Secretary of Agriculture.

[FR Doc. 83-26440 Filed 9-23-83; 4:16 pm]

BILLING CODE 3410-10-M

Office of Secretary

President's Task Force on Food Assistance; Meeting

In compliance with the Federal Advisory Committee Act (5 U.S.C. App. I) the United States Department of Agriculture announces the following meeting:

Name: President's Task Force on Food Assistance.

Date: October 13, 1983.

Time:

9:00 a.m.—12:00 noon
1:30 p.m.—4:30 p.m.

Date: Octooer 14, 1983

Time: 9:00 a.m.—12:00 noon

Place: Board of Supervisors Hearing Room, Third Floor, Hall of Administration, Los Angeles County, 550 West Temple Street, Los Angeles, California, 90012.

Type of Meeting: Open to the public.

Purpose: On October 13 the Task Force will conduct open hearings. Persons wishing to speak at the hearing on October 13 should call or write the Task Force on Food Assistance, New Executive Office Building, Room 2020, 726 Jackson Place, N.W., Washington, 20503. (Telephone: 202–395–3454) in order to obtain a place on the agenda. On October 14 the Task Force will conduct Task Force Business.

Contact Person For Agenda and Further Information: Ms. Irene Lankford, Food and Nutrition Service, U.S. Department of Agriculture, Room 1103, 3101 Park Center Drive, Alexandria, Va. 22302, Telephone (703) 756–3065.

Done at Washington, D.C. this 27th day of September 1983

Dated: September 27, 1983.

Charles L. Grizzle,

Deputy Assistant Secretary of Administration.

[FR Doc. 83-26685 Filed 9-27-83; 10:05 am]

BILLING CODE 3410-01-M

Cooperative State Research Service

Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, Cooperative State Research Service announces the following meeting:

Name: Animal Health Science Research Advisory Board.

Date: October 27–28, 1983.

Time: 8:30 a.m.

Place: Room 023, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board names and agenda: Available from contact person below.

Contact person: Earl J. Splitter, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–5007.

Done at Washington, D.C., this 13th day of September 1983.

C. I. Harris,

Acting Administrator, Cooperative State Research Service.

[FR Doc. 83-26415 Filed 9-27-83; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

Pitt County Schools, RC&D Measure, North Carolina; Finding of No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pitt County Schools RC&D Measure, Pitt County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, Telephone (919) 755–4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing flooding and for improving drainage on five school grounds. The planned works of improvement include installing catch basins, pipes and sub-surface drainage tubing. Grading and shaping will be done to improve surface drainage and to eliminate ponding. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: September 9, 1983.

(Catalog of Federal Domestic Assistance Program No. 19.901, 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)

Coy A. Garrett,

State Conservationist.

[FR Doc. 83-26390 Filed 9-27-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 41531]

Lockheed Aircraft Service Co.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 3, 1983, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C., September 22, 1983.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 83-26469 Filed 9-27-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41454]

Midway (Southwest) Airway Co.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated at Washington, D.C., September 22, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-26470 Filed 9-27-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Current Membership of Departmental Performance Review Board

This notice announces the current membership of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and members whose ratings are initially prepared by their respective appointing authorities.

Departmental PRB members are appointed for a two year term expiring August 31, 1985. The list of individuals eligible to serve on the Departmental PRB is as follows:

C. Louis Kincannon, Deputy Director, Bureau of the Census
Robert P. Gajdys, Chief, Personnel Division, National Oceanic and Atmospheric Administration
Robert F. White, Group Director, Patent and Trademark Office
Allan H. Young, Deputy Director, Bureau of Economic Analysis
Kenneth M. Brown, Deputy Director, Bureau of Industrial Economics
Saul Padwo, Director, Office of Trade Information Services, International Trade Administration
Marjory E. Searing, Director, Office of International Sectoral Policy, International Trade Administration
James Sexton, Jr., Assistant Director for Administration, Minority Business Development Agency
Herbert S. Becker, Assistant Director for Advocacy, Research and Information, Minority Business Development Agency
Guy W. Chamberlin, Jr., Director, Office of Administration, National Bureau of Standards
Edward L. Brady, Associate Director, International Affairs, National Bureau of Standards
Lucy Falcone, Senior Advisor to the Chief Economist, Office of Under Secretary for Economic Affairs
Peter B. Hale, Director, Office of the European Community, International Economic Policy, International Trade Administration
Timothy R. Keeney, Deputy General Counsel for Policy, Research, Services and Coastal Zone, National Oceanic and Atmospheric Administration
John K. Snyder Jr., Deputy Under Secretary for Travel and Tourism
Susan G. Stuebing, Deputy Assistant Secretary, National Telecommunications and Information Administration
George Dick, Deputy Assistant Secretary, Economic Development Administration
Robert M. Hill, Jr., Regional Director of Seattle, Economic Development Administration
Daniel L. Skoler, Chairman, Trademark Trial and Appeal Board, Patent and Trademark Office
Paul L. Guidry, Special Assistant to the Director-General, U.S. and Foreign Commercial Service, International Trade Administration
Charles E. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration
James R. Phillips, Director, Office of Major Projects, Trade Development, International Trade Administration
Nelson Rodriquez, Assistant Director for Resource Development, Minority Business Development Agency
Joseph Cooper, Assistant Director for Field Operations, Minority Business Development Agency
Joseph C. Brown, Deputy Director of Personnel, Office of the Secretary
Otto J. Wolff, Special Assistant to the Secretary of Commerce
Helen W. Robbins, Executive Assistant to the Secretary of Commerce
Mark R. Policinski, Associate Deputy Secretary
H. Stephen Halloway, Associate General Counsel for Legislation and Regulation, Office of General Counsel.

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. Charles E. Patterson, Executive Secretary to the Departmental Performance Review Board, Office of Personnel, Herbert C. Hoover Building, Room 5119, Washinton, D.C. 20230; (202) 377-5720.

Dated: September 20, 1983.

Charles E. Patterson,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 83-26381 Filed 9-27-83; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on this application must be submitted on or before October 18, 1983.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 6711, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number #83-00020."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General

Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate. A certificate of review is to be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or reseale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Office of Export Trading Company Affairs has received the following application for an Export Trade Certificate of Review:

Applicant: Barlar International, Inc.
Application: #83-00020
Dated Received: August 13, 1983
Dated Deemed Submitted: August 14, 1983
Members in Addition to Applicant: None

Summary of Application: Barlar International, Inc., a U.S. export trading company, incorporated in the State of Texas and located at 2714 Lakeview Lane, Carrollton, Texas 75006, submitted an application seeking certification for the following export trade activities and methods of operation for its export trade worldwide.

A. Export Trade

Barlar International, Inc., intends to act as a representative for U.S. suppliers of the following products and services:

(a) Contract personnel;
(b) Computers;
(c) Computer software;
(d) Computer equipment;
(e) Firearms;
(f) Artillery and projectors;
(g) Rockets, torpedoes, bombs and mines;
(h) Propellants, explosives and incendiary agents;
(i) Vessels of war, special naval equipment;
(j) Tanks, trucks and military vehicles;
(k) Aircraft, associated equipment and spare parts;
(l) Military training equipment;
(m) Fire control, range finder control equipment;
(n) Oil field equipment;
(o) Construction equipment;
(p) Agriculture equipment;
(q) Communications equipment;
(r) Commercial ships/boats;
(s) Commercial aircraft;
(t) Foodstuffs; and
(u) Spare parts for all above equipment.

B. Activities/Methods of Operations

Barlar International, Inc., intends to represent U.S. suppliers of the above mentioned products and services on a non-exclusive basis.

Barlar International, Inc., is licensed, registered, and otherwise approved by the U.S. State Department, Bureau of Alcohol, Tobacco and Firearms, Texas State and local authorities, to conduct business in specifically authorized materials, personnel services, and certain technical data, that are controlled by the U.S. Government.

The Office of Export Trading Company Affairs is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register.** Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued. Information submitted by any person in connection with this application will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Irving P. Margulies,
Deputy General Counsel.
September 23, 1983.
[FR Doc. 83-26389 Filed 9-27-83; 8:45 am]
BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and its Administrative Subcommittee; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Information concerning public meetings of the Caribbean Fishery Management Council and its Administrative Subcommittee, as published in the **Federal Register,** August 15, 1983 (48 FR 36871) and August 25, 1983 (48 FR 38662), has been changed. The Council has rescheduled a portion of its September 20-21, 1983 public meeting agenda for a later date as follows:

Council

Continue its Wednesday, September 21, 1983 meeting on Wednesday, September 28, 1983, to discuss the Shallow-water Reef Fish Fishery Management Plan; convene at approximately 9:30 a.m., and adjourn at approximately 4 p.m. The public meeting location has also been changed and will take place at the Federal Building, Conference Room G-51, Chardon Street, Hato Rey, Puerto Rico.

Administrative Subcommittee

The Council's Administrative Subcommittee meeting has been cancelled until further notice.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4927.

Dated: September 22, 1983.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.
[FR Doc. 83-26395 Filed 9-27-83; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Proposed Additions and Deletion

Correction

In FR Doc. 83-25341, appearing on page 41620, in the issue of Friday, September 16, 1983, in the second column, in the seventh line from the top, "8440-00-964-3979" should read "8440-00-984-3978".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

Advisory Council on Dependents' Education; Meeting

AGENCY: Advisory Council on Dependents' Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education, of two standing committees concerning education programs and administration, and of two ad hoc committees concerning the Comprehensive Study of DoDDS. This notice also describes the functions of the council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATE: The Advisory Council on Dependents' Education: October 18, 9:00 a.m. to 1:00 p.m.; October 19, 9:00 a.m. to 12:00 m.; October 21, 9:00 a.m. to 5:00 p.m. Committees: October 18, 2:00 to 5:00 p.m.; October 19, 1:00 p.m. to 5:00 p.m.; October 20, 9:00 to 5:00 p.m.

ADDRESS: Roslyn Westpark Hotel, Shenandoah Rooms B and C, 1900 N. Fort Myer Drive, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Keough, Administrator of Education for Overseas Dependents, 400 Maryland Avenue, SW., Washington, D.C. 20202; (202) 245–8011.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under section 1411 of the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 929). The Council is established to recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system.

The meeting of the Council is open to the public. The proposed agenda for the full Council on October 18 and 19 includes: a report of the Administrator on Council matters, a progress report by the Director, a report by the Director on the current status of previously expressed ACDE concerns, and presentations by DoDDS staff members on staffing, personnel evaluation, testing, computer education, and foreign languages in the DoDD system. Dr. John L. D. Clark will address the Council at 10:30 a.m. on October 19, on foreign language teaching in the United States. The proposed agenda for the full Council on October 21 includes reports by the standing and ad hoc committees.

The proposed agenda for the standing Education Program Committee on October 18 and 19 includes early childhood education, reading and mathematics tests as requirements for graduation, implications for DoDDS of the report of the National Commission on Excellence in Education, the gifted and talented program, and foreign language program and credit requirements.

The proposed agenda for the standing Administration Committee for October 18 and 19 includes A<DE procedures and committee organization, a request for DoDDS evalution of its new computer system, year-end reports by local school advisory committees, and consideration of local school advisory committee appeals to the Director.

The proposed agenda for the ad hoc committees on October 20 will be the Comprehensive Report on the DoDDS system.

Records are kept of all Council proceedings and are available for inspection at the office of the Advisory Council on Dependents' Education, Room 4155, 400 Maryland Avenue, SW., Washington, D.C. from the hours of 8:30 5:30 p.m.

Dated: September 22, 1983.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 83-26366 Filed 9-27-83; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Request for Resumes From Potential Field Readers

AGENCY: Department of Education.

ACTION: Notice for individuals interested in reviewing applications submitted under programs administered by the Office of Higher Education Programs and the Fund for the Improvement of Postsecondary Education in Fiscal Year 1984.

SUMMARY: The Assistant Secretary for Postsecondary Education, Department of Education, invites resumes from qualified individuals interested in serving as field readers for one or more of the discretionary grant programs administered by the Office of Higher Education Programs and the Fund for Improvement of Postsecondary Education.

ADDRESS: Interested persons should submit one (1) copy of their current resume to Mr. William J. Craven at the address in the following paragraph. Applications for fiscal year 1984 should be received by October 28, 1983 to provide sufficient time for processing prior to the selection of the field reader panels to review applications submitted during Fiscal Year 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Craven, Management Information Specialist, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3036, ROB–3, Washington, D.C. 20202. Telephone (202) 245–2661.

SUPPLEMENTARY INFORMATION: Each year the Secretary selects field readers who have the appropriate expertise to review applications submitted for funding in that year. Generally, separate groups of readers are selected for each program receiving applications. This notice contains Appendix I for a list and brief description of the programs which may use field readers in Fiscal Year 1984 depending upon the availability of funds. Interested parties are encouraged to review this list and the appropriate program regulations before applying for reader candidacy.

Once field reader resumes are received, reader candidate information is stored in a computer data bank. The initial selection of field readers is made from this computerized roster. Final selection of field readers is made following a more careful review of the information maintained on file, and determination of the readers' availability and conflict of interest status. An individual will not be selected to serve as a field reader for any program where a conflict of interest exists. The existence, characteristics, and use of this system of records were announced in a notice (18–40–0079) published on June 2, 1981, in the Federal Register. (46 FR 29652).

If an individual's name is currently in the Office of Postsecondary Education field reader system, it is not necessary for the individual to submit a new resume for Fiscal Year 1984 to be considered.

List of Office of Postsecondary Education Programs that may use field readers in Fiscal Year 1984. (1) The number in parentheses following the program name corresponds to the number assigned to the program by the *Catalog of Federal Domestic Assistance*, published by the Office of Management and Budget. (2) The data in the parentheses following the program description is the citation regarding the publication of the current program regulations in the Code of Federal Regulations.

International Education Programs

Business and International Education Program. (84.153). To increase and promote international understanding and economic enterprise through education and training programs for business personnel (No program regulations published).

Fulbright-Hays Foreign Curriculum Consultants. (84.020). To bring specialists from other countries to the

U.S. for an academic year as resource persons to assist in planning and developing curricula in modern foreign language and area studies (34 CFR Part 665).

Fulbright-Hays Doctoral Disseration Research Abroad Program. (84.022). To support full-time dissertation research abroad in modern foreign language and area studies in order to develop knowledge and capability in world areas not commonly taught in U.S. schools (34 CFR Part 662).

Fulbright-Hays Faculty Research Abroad Program. (84.019). To support research and study abroad to help postsecondary institutions strengthen their modern foreign language and area studies programs (34 CFR Part 663).

Fulbright-Hays Group Projects Abroad (84.021). To assist in the development of modern foreign language and area studies programs in the United States by training groups of U.S. educational personnel abroad (34 CFR Part 664). The Fulbright-Hays regulations were published in the **Federal Register** on August 26, 1983. (48 FR 38968–38979).

International Research and Studies (84.017). To support surveys and studies to determine the need for improved instruction in foreign language and area studies and to develop specialized instructional materials in those areas (34 CFR Parts 655 and 660).

National Resource Centers (84.015). To upgrade training and resources at centers for international studies, including foreign language and area studies (34 CFR Parts 655 and 656).

National Resource Fellowships (84.015). To provide academic year and summer fellowships to graduate students in foreign language and area studies (34 CFR Part 655 and 657).

Undergraduate International Studies and Foreign Language Program (84.016). To assist postsecondary schools to develop comprehensive programs to improve undergraduate instruction in international studies and foreign languages; to assist organizations to improve undergraduate instruction in those areas (34 CFR Parts 655 and 658).

Institutional Support Programs

Challenge Grant Program (84.031C). To provide funds to eligible institutions on a matching basis as an incentive to seek alternative sources of funding (34 CFR Parts 624 and 627).

Cooperative Education Programs (84.055). To support planning and implementation of programs integrating periods of academic study with public or private employment; and for administration, training, research, and demonstration/exploration projects (34 CFR Parts 631 through 635).

Educational Opportunity Centers (84.066). To operate centers to provide information about higher education opportunities and assist individuals in applying to or attending postsecondary institutions (34 CFR Part 644).

Fellowships for Graduate and Professional Study (84.094). To provide fellowships and institutional support in academic and professional areas to assist students who demonstrate financial need to undertake graduate and professional study (34 CFR Part 649).

Law School Clinical Experience Program (84.097). To help fund (up to 90% of the cost) the establishment and expansion of programs to provide clinical experience for law students at accredited law schools (34 CFR Part 639).

Special Needs Program (84.031B). To provide funds to eligible institutions to strengthen their planning, management, and fiscal capabilities (34 CFR Parts 624 and 626).

Special Services for Disadvantaged Students (84.042). To assist disadvantaged students, including the handicapped, in completing postsecondary education (34 CFR Part 646).

Staff Training for Professional Development (84.103). Provides short-term training for leadership and other staff involved in programs funded under the Special Programs for Disadvantaged Students (TRJO) programs (34 CFR Part 642).

Strengthening Program (84.031A). To provide funds to eligible institutions to improve their academic quality, institutional management, and fiscal stability in order to increase institutional sufficiency (34 CFR Parts 624 and 625).

Talent Search (84.044). To help identify and encourage disadvantaged students to complete high school and pursue postsecondary education (34 CFR Part 643).

Upward Bound (84.047). To motivate young people from low-income backgrounds with inadequate high school preparation to enter and succeed in postsecondary education (34 CFR Part 645).

Fund for the Improvement of Postsecondary Education

Comprehensive Program (84.116). To assist educational institutions, agencies, and organizations in developing programs which encourage reform and innovation in postsecondary education (34 CFR Part 630).

Mina Shaughnessy Scholars Program (84.116). To provide educators with time and funds to further develop and analyze ideas emerging from their practice, to gather and synthesize supporting information, and to share their concepts with others (34 CFR Part 630).

Minority Institutions Science Improvement Program (84.120). To effect longrange improvement in science education at predominantly minority institutions. Support is provided for activities designed to enhance an institution's capability for developing and maintaining a quality science education program for all of its students and to augment the institution's capability for increasing the flow of underrepresented ethnic minorities into scientific careers (34 CFR Part 637).

Dated: September 21, 1983.

Edward M. Elmendorf,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 83-26393 Filed 9-27-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

[DOE/EIS-0108D]

Availability of Draft Environmental Impact Statement and Floodplain/Wetlands Assessment, L-Reactor Operation, Savannah River Plant, Aiken, SC

AGENCY: Department of Energy.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS), Floodplain/Wetlands Assessment, and notice to conduct public hearings on DEIS.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft environmental impact statement, "L-Reactor Operation, Savannah River Plant, Aiken, South Carolina" (DOE/EIS-0108D), for a proposed action to operate the L-Reactor to produce plutonium for the nation's defense programs. The proposed action could potentially affect wetlands and floodplains through the selection of a discharge mode for secondary cooling water. A floodplains/wetlands assessment has been prepared as an appendix to the DEIS.

Public comments are invited and public hearings will be held with respect to the DEIS.

DATES: Written comments to the Department of Energy should be

postmarked by November 14, 1983, to assure consideration in preparation of the final environmental impact statement. Public hearings will be held during the week of October 31, 1983, as described in this notice. Individuals desiring to make oral statements at one of the hearings should notify Mr. M. J. Sires at the address below by October 26, 1983, so that the Department may arrange a schedule for the presentations.

ADDRESS: Written comments on the DEIS, requests to present oral comments at the hearings, and requests for further information should be directed to: Mr. M. J. Sires III, Assistant Manager for Health, Safety and Environment, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801. Attention: "EIS for L-Reactor."

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The Department of Energy published a Notice of Intent (48 FR 32966) on July 19, 1983, regarding the preparation of a draft EIS on the proposed operation of L-Reactor at the Savannah River Plant.

II. Background Information

The Savannah River Plant (SRP) is a controlled-access, major DOE installation established in the early 1950's for the production of nuclear materials for national defense. Plant facilities, which may be characterized as heavy industry, consist of five production reactors (three operational and two in standby status), electrical and steam generating plants, two chemical separations facilities, fuel and target fabrication facilities, a heavy-water production facility (in standby status), research laboratories, repair shops, warehouses, and administrative facilities. Reactor operation began at SRP in 1953 and five reactors operated between 1956 and 1964 (designated C, K, P, L, and R). R-Reactor was placed in standby status in 1964 due to decreasing demand for nuclear matertials. In 1968, L-Reactor was also placed in standby status due to a continuing decrease in demand for nuclear materials for national defense.

Recent requirements for additional nuclear materials were approved by President Carter in 1980 and by President Reagan in 1982. This increased need for nuclear materials stems largely from efforts to modernize the weapons in the stockpile. The restart of L-Reactor is proposed as a key element to meet the increased nuclear materials production needs.

During the 15 years since L-Reactor was placed in standby status, modifications to the three operating reactors have been made to enhance their safety and operational reliability. Currently, L-Reactor, which has the same operations configuration, is being renovated and upgraded to the same safety and reliability of other SRP operating reactors. Upgrading and renovation is scheduled to be completed by October 1983. Approximately 60 percent of the upgrading costs are for safety and environmental protection.

The Energy and Water Development Appropriations Act, 1984, directs the Department of Energy to prepare this EIS on an expedited basis. Specifically, the Act requires the Department of Energy to issue the Record of Decision, after the preparation of the final EIS, no sooner than December 1, 1983, nor later than January 1, 1984.

III. Scope of DEIS

The scope of this DEIS was developed utilizing comments received on: the environmental assessment from August 1982 until August 1983; from a public hearing held February 9, 1983 (conducted by the Senate Armed Services Committee); from an extended public hearing/review period on the February 9, 1983, hearing record during the period of April 18, 1983 through July 17, 1983; and from the scoping process for this DEIS (July 19 through Autust 10, 1983) including four scoping meetings held in Augusta and Savannah, Georgia, and Aiken and Beaufort, South Carolina.

The DEIS addresses the need for L-Reactor, the potential production options to the restart of L-Reactor, the "no-action" alternative, mitigation alternatives, incremental and cumulative impacts, monitoring plans, environmental consequences from both routine operation and postulated accidental occurrences, unavoidable and irreversible impacts, and floodplain/wetlands impacts.

IV. Comment Procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to Federal, state, and local agencies, organizations, environmental groups, and individuals known to be interested in the proposed operation of L-Reactor. Additional copies may be obtained by contacting either of the following:

Mr. M. J. Sires III, Assistant Manager for Health, Safety, and Environment, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801, (Phone: 803–725–2597)

Mr. John Ford, DP–131, Office of Nuclear Materials Production, U.S. Department of Energy, Washington, DC 20545, (Phone: 301–353–5498)

Copies of the DEIS and copies of the documents referenced in the DEIS are available for public inspection at the DOE Public Reading Room, 211 York Street, NE, Aiken, South Carolina. Copies of the DEIS are also available for public inspection at the following locations:

Freedom of Information Reading Room, Room 1E–190, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585

U.S. Department of Energy, 211 York Street, NE, Federal Building, Aiken, South Carolina 29801

Augusta Regional Library, 902 Greene Street, Augusta, Georgia 30901, (404) 724–1871

Burke County Library, Fourth Street, Waynesboro, Georgia 30830, (404) 554–3277

Statesboro Regional Library, 124 South Main Street, Statesboro, Georgia 30458, (912) 764–7573

Atlanta Public Library, 1 Margaret Mitchell, NW, Atlanta, Georgia 30303, (404) 688–4636

Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201, (803) 779–9084

South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201, (803) 758–3181

Aiken-Bamberg-Barnwell-Edgefield Regional Library, 1307 Georgia Avenue, North Augusta, South Carolina 29841, (803) 648–8961

Allendale-Hampton-Jasper Regional Library, War Memorial Building, Court House Square, Allendale, South Carolina 29810, (803) 584–3513

Charleston County Library, 404 King Street, Charleston, South Carolina 29403, (803) 723–1645

Warren C. Gibbs Memorial Library, 326 North Bel Air Road, Evans, Georgia 30809, (404) 863–1948

Chatham County Public Library, 2002 Bull Street, Savannah, Georgia 31499, (921) 234–5127

Screven-Jenkins Regional Library, 302 East Ogeechee Street, Sylvania, Georgia 30467, (912) 564–7526

Washington Memorial Library, 1180 Washington Avenue, Macon, Georgia 30467, (912) 744–0800

Aiken County Public Library, 435 Newberry Street, Aiken, South Carolina 29801, (803) 649–2352

Orangeburg County Free Library, 510 Lories NE, P.O. Box 1367, Orangeburg South Carolina 29115, (803) 531–4636

Beaufort County Library, 710 Craven Street, Beaufort, South Carolina 29902, (803) 524–0762
Spartanburg County Library, 333 South Pine Street, Spartanburg, South Carolina 29304, (803) 596–3505
Greenville County Library, 300 College Street, Greenville, South Carolina 29601, (803) 242–5000

B. Written Comments

Interested parties are invited to provide comments on the DEIS to Mr. M. J. Sires at the above address. Comments should be identified on the outside of the envelope with the designation "EIS for L-Reactor". All comments and related information should be postmarked by November 14, 1983, to assure consideration in preparing the final EIS. Comments postmarked after November 14, 1983, will be considered to the extent practicable.

C. Public Hearings

1. Participation procedure. Public hearings have been scheduled on the DEIS as follows:

Augusta, Georgia on October 31, 1983, at 9:00 a.m. and 6:00 p.m. at the Augusta Hilton Convention Center, 748 Ellis Street, Augusta, Georgia 30902.

Aiken, South Carolina on November 1, 1983, at 9:00 a.m. and 6:00 p.m. at the Odell Weeks Activity Center, 1700 Whiskey Road, Aiken, South Carolina 29801.

Beaufort, South Carolina on November 3, 1983, at 9:00 a.m. and 6:00 p.m. at the Ramada Inn, 3127 Boundary Street, Beaufort, South Carolina 29902.

Savannah, Georgia on November 4, 1983, at 9:00 a.m. and 6:00 p.m. at the Desoto Hilton Hotel, 15 East Liberty Street, Savannah, Georgia 31401.

The public is invited to provide comments on the DEIS at the hearings. The hearing will not be a judicial or evidentiary-type hearing. Individuals desiring to make an oral presentation at one of these hearings should notify Mr. Sires at the address above as soon as possible after the appearance of this notice in the **Federal Register** so that the Department may arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register to speak at the hearings before each hearing commences. Individuals and representatives of organizations will be called on to present comments as time permits. To assure that everyone has the opportunity to present comments, 5 minutes will be alloted to individuals and 10 minutes will be alloted to individuals representing groups. Comments received at these hearings will be considered in the preparation of the final EIS. Individuals or representatives of organizations presenting comments at the hearings are requested to have written copies of their comments available at the hearings.

2. Conduct of hearing. The Department of Energy will arrange the schedule of commentors and will establish basic rules and procedures for conducting the hearing. The length of each presentation may be limited, depending on the number of persons wishing to speak. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer at the start of the hearings. A transcript of the hearing will be prepared, and the entire record of the hearing, including the transcript, will be retained by the Department of Energy for inspection at the Department's Freedom of Information Rating Room, Room 1E,–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, and the Savannah River Operations Office Public Reading Room, 211 York Street, NE, Aiken, South Carolina between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. Additional copies of the complete transcript will also be available at the public document centers noted above.

Issued in Washington, DC, September 22, 1983.

William A. Vaughn,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83-25416 Filed 9-27-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-488-000]

Arkansas Louisiana Gas Co.; Application

September 23, 1983.

Take notice that on August 26, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana, 71151, filed in docket No. CP83-488-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Munce Compressor Station located in Sterlington, Ouachita Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla states that the Munce Station was constructed in 1929 to help move gas through its Line "F" to retail markets in the Camden-Eldorado area and that the Munce Station contains ten 1,000 horsepower Cooper Bessemer reciprocating compressors. It is asserted that the station is now obsolete, in a non-operative condition, and has not been utilized for some time and that since the Camden-Eldorado markets are now supplied with natural gas from other sources, the Munce station is no longer needed. Arkla avers the proposed abandonment would not result in the loss of service to any customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 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 the 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Arkla to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26419 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-625-003]

Boston Edison Co.; Refund Report

September 23, 1983.

Take notice that on August 23, 1983, Boston Edison Company ("BECO") submitted for filing a Refund Report pursuant to the July 8, 1983 Commission Letter Order in Docket No. ER82-625-000.

BECO states that it has refunded to the Towns of Concord, Norwood and Wellesley, Massachusetts, the differences in billing under the S-7 settlement rates, as well as under the rates previously billed in the pertinent period. BECO further states that the refunds cover the period from January 1, 1983 through May 31, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 29, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26422 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-508-000]

Equitable Gas Co.; Application

September 23, 1983.

Take notice that on September 13, 1983, Equitable Gas Company (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-508-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 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 the 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 and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26423 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-63-004]

Iowa Southern Utilities Co.; Application for Exemption

September 23, 1983.

Take notice that Iowa Southern Utilities Company (Iowa Southern) filed an application on August 15, 1983 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E. In addition, a waiver of the requirement specified in Section 290.601(a) of Subpart F was requested.

In its application for exemption ISU states, in part, that it should not be required to file the specified data for the following reasons:

The Iowa State Commerce Commission (Iowa Commission), the public utility regulatory body in the State of Iowa, has adopted as a rusult of exhaustive PURPA related hearings extensive rules on cost of service information that must accompany the filing of any request for a change in retail electric rates in Iowa.

Because of the adoption of these extensive cost of service requirements at the state level, much of the PURPA information has become duplicative of the information now required by the Iowa Commission.

Despite many similarities, portions of the PURPA information have little value in Iowa retail rate proceedings because that information has been rejected by the Iowa Commission as a premise upon which rates are to be based.

Iowa Southern is a relatively small electric utility. Annual Kwh sales for 1982 were only approximately 1.5 billion. However, the total costs of complying with the load research requirements are essentially the same for a small electric utility as for a large one. Thus, on a per customer basis the costs fall disproportionately and unfairly on customers of small electric utilities, while customers of large systems see a relatively small impact from such a project on their rates. Iowa Southern has repeatedly requested and has been granted by the Commission exemptions from these load research requirements. [The most recent exemption was granted for the June 30, 1984 filing by Order issued May 10, 1983 in Docket No. RE80-63-003]. The same arguments utilized in requesting the exemption from sample metering load research requirement are valid for the class cost-of-service study requirements as well. Equity is not served by requiring utilities as small as Iowa Southern to incur the same level of expense as much larger companies.

Copies of the application for exemption are on file with the FERC and are available for public inspection. The FERC regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility published a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal

Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Stephen W. Southwick, Secretary and General Cousel, Iowa Southern Utilities Company, 300 Sheridan Avenue, Centerville, Iowa 52544.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25420 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-656-000]

Kentucky Utilities Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Ordering Summary Disposition, Denying Motion to Reject, and Establishing Hearing and Price Squeeze Procedures

September 23, 1983.

On August 1, 1983, KU submitted for filing a proposed two step increase in its rates to thirteen wholesale customers.[1] The proposed Phase 1 rate would result in increased revenues of approximately $8.5 million (12.3%) for the twelve month test period (Period II) ending December 31, 1984. The Phase 2 rates would result in an additional increase in revenues of $1.5 million (2.1%) for Period II. The proposed rates (Phase 1 and Phase 2) reflect the inclusion in rate base of 50% of Construction Work in Progresss (CWIP), in addition to qualifying pollution control and fuel conversion facilities. KU proposes effective dates of October 1, 1983, and October 2, 1983, for the Phase 1 and Phase 2 rates, respectively.

Notice of KU's proposed rate increase was published in the **Federal Register** on August 15, 1983, with comments due on or before August 23, 1983.[2] On August 22, 1983, the City of Frankfort, Kentucky (Frankfort), filed a copy of a resolution of the Board of Commissioners of Frankfort which opposes any increase in wholesale electric rates by KU.

On August 23, 1983, nine full-requirements customers of KU (the Municipals) [3] filed a protest, a timely motion to intervene, a motion to reject the Phase 2 rates, and a motion for a five-month suspension of Phase 1 and Phase 2 rates. The Municipals allege that Phase 2 of KU's proposed rate increase is in violation of Order No. 298 [4] in that it supersedes the Phase 1 rate, which also includes CWIP, in less than the 10 month minimum required by Order No. 298. The Municipals further allege that KU's proposed rates are excessive, noting cost-of-service issues. The Municipals also request that the Commission establish a second phase of this proceeding to resolve potential price squeeze allegations.

On August 23, 1983, the City of Paris, Kentucky (Paris), the only partial requirements wholesale customer of KU, filed a timely motion to intervene which raises no substantive issues.

On August 25, 1983, Frankfort City Commissioner Patricia Layton filed a letter submitting a copy of a petition in opposition to KU's proposed increase which she states was signed by over 3,000 residents of Frankfort.

On September 7, 1983, KU filed a responses to the motions to intervene filed by Paris and the Municipals. KU does not oppose the requests to intervene although it objects to the various requests for affirmative relief made by the Municipals. KU opposes the Municipals' motion to reject the Phase 2 rates contending that the Municipals' motion is based upon an erroneous interpretation of § 35.26(d)(ii) of the Commission's regulations (18 CFR 35.26 (d)(ii)). KU also disputes the Municipals' claim of a potential discrimination issue and further contends that the Phase 1 rate increase merits no more than a one day suspension. Finally, KU addresses the various cost-of-service issues identified by the Municipals.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the Municipals and Paris parties to this proceeding.

We note that KU has calculated AFUDC on a net-of-tax basis. This treatment is contrary to Opinion No. 184 [5] in which the Commission required KU to calculate its AFUDC on a gross-of-tax basis. Accordingly, we shall order summary disposition.

Our analysis also reveals that KU has overstated the amount of CWIP to be included in rate base and has included over 50% of CWIP other than pollution control and fuel conversion facilities. While KU has correctly included 50% of its direct CWIP expenditures, it has included 100% of its accumulated AFUDC balances at January 1, 1984, rather than 50%, and has incorrectly computed its monthly test year AFUDC accruals based on total CWIP. This is counter to Order No. 298 which requires that no more than 50% of CWIP be reflected in rate base and that AFUDC be computed on only those monthly construction balances not included in rate base. Accordingly, summary disposition of this issue will be ordered. Because the revenue impact of each of these summary dispositions is substantial in relation to the proposed rate increase, we shall require KU to refile its cost of service and rates to reflect the Commission's determination.

The Municipals allege that KU's Phase 2 rate increase violates Order No. 298 in that it supersedes the Phase 1 rate, which also includes CWIP, in less than the ten-month minimum required by Order No. 298. We note that Order No. 298 states that this provision was intended to restrict rate increases directly related to CWIP to six percent in the first year of the rule.[6] KU's Phase 2 rate increase does not exceed the six percent ceiling for the first year. Accordingly, we shall deny the Municipals' motion to reject KU's Phase 2 rate increase.

Our preliminary examination of the instant filing and the intervenors' pleadings indicates that the rates proposed by KU have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the Phase 1 and Phase 2 rate increases for filing, as modified by summary disposition, and we shall suspend the rates as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy noting that where our preliminary examination indicates that revised rates may be unjust and unreasonable and may yield substantially excessive revenues, as defined in *West Texas*, we will ordinarily suspend the rates for a period of five months. Because our preliminary review suggests that KU's proposed Phase 2 rates, as adjusted by summary disposition, may produce substantially

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[1] *See* Attachment for customers and rate schedule designations.

[2] 48 FR 36685 (1983).

[3] The Cities of Barbourville, Bardstown, Benham, Corbin, Falmouth, Madisonville, and Providence, Kentucky, Electric & Water Plant Board of Frankfort, Kentucky, and Berea College in Berea, Kentucky.

[4] Order No. 298, "Construction Work in Progress for Public Utilities," Docket No. RM81-38 (May 16, 1983).

[5] *Kentucky Utilities Company*, Opinion No. 184, Docket Nos. ER81-267-000 and ER81-341-000 (August 1, 1983).

[6] 48 FR 24352 (1983).

excessive revenues, we shall suspend these rates for five months, to become effective subject to refund on March 2, 1984. Since our review indicates that the Phase 1 rates may not be substantially excessive, we shall suspend those rates for one day to become effective, as modified, on October 2, 1983, subject to refund.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.

The Commission orders:

(A) The Municipals' motion to reject KU's Phase 2 rates is hereby denied.

(B) Summary disposition is hereby ordered, as noted in the body of this order, with respect to: (1) KU's computation of AFUDC and (2) KU's inclusion of CWIP in rate based. Within thirty (30) days of date of this order, KU shall refile its Phase 1 and 2 rates and supporting cost data to reflect these determinations.

(C) KU's proposed Phase 1 and Phase 2 rates are hereby accepted for filing, as modified by summary disposition; and Phase 2 rates are suspended for five months, to become effective, subject to refund, on March 2, 1984, and the Phase 1 rates are suspended to become effective Obtober 2, 1983, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of KU's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administratve law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[Docket No. ER83-656-000]

Kentucky Utilities Company

Rate Schedule Designations Phase I and Phase II Rates

Filed: August 10, 1983.

PHASE I

Designation	Description	Other party
(1) Supplement No. 7 to Rate Schedule FERC No. 146 (Supersedes Supplement No. 6)	WPS-83A (M)	Barbourville.
(2) Supplement No. 7 to Rate Schedule FERC No. 147 (Supersedes Supplement No. 6)	do	Bardstown.
(3) Supplement No. 7 to Rate Schedule FERC No. 148 (Supersedes Supplement No. 6)	do	Bardwell.
(4) Supplement No. 7 to Rate Schedule FERC No. 149 (Supersedes Supplement No. 6)	do	Benham.
(5) Supplement No. 7 to Rate Schedule FERC No. 150 (Supersedes Supplement No. 6)	do	Corbin.
(6) Supplement No. 7 to Rate Schedule FERC No. 151 (Supersedes Supplement No. 6)	do	Falmouth.
(7) Supplement No. 7 to Rate Schedule FERC No. 152 (Supersedes Supplement No. 6)	do	Frankfort.
(8) Supplement No. 7 to Rate Schedule FERC Nos. 153 to 156 (Supersedes Supplement No. 6).	do	Madisonvile.
(9) Supplement No. 7 to Rate Schedule FERC No. 157 (Supersedes Supplement No. 6)	do	Nicholasville.
(10) Supplement No. 7 to Rate Schedule FERC Nos. 158 and 159 (Supersedes Supplement No. 6).	do	Providence.
(11) Supplement No. 6 to Rate Schedule FERC No. 160 (Supersedes Supplement No. 5).	WPS-83 (A) (M)	Berea College.
(12) Supplement No. 6 to Rate Schedule FERC Nos. 161 and 162 (Supersedes Supplement No. 5).	do	Madisonvile.
(13) Supplement No. 6 to Rate Schedule FERC No. 163 (Supersedes Supplement No. 5).	do	Nicholasville.
(14) Supplement No. 7 to Rate Schedule FERC No. 164 (Supersedes Supplement No. 6).	WPS-83A (ODP)	Old dominion.
(15) Supplement No. 6 to Rate Schedule FERC No. 165 (Supersedes Supplement No. 8).	do	Old Dominion.
(16) Supplement No. 9 to Rate Schedule FERC No. 83 (Supersedes Supplement No. 8)	PI-A	Paris.

PHASE II

(1) Supplement No. 8 to Rate Schedule FERC No. 146 (Supersedes Supplement No. 7)	WPS-83(M)	Barbourvile.
(2) Supplement No. 8 to Rate Schedule FERC No. 147 (Supersedes Supplement No. 7)	do	Bardstown.
(3) Supplement No. 8 to Rate Schedule FERC No. 148 (Supersedes Supplement No. 7)	do	Bardwell.
(4) Supplement No. 8 to Rate Schedule FERC No. 149 (Supersedes Supplement No. 7)	do	Benham.
(5) Supplement No. 8 to Rate Schedule FERC No. 150 (Supersedes Supplement No. 7)	do	Corbin.
(6) Supplement No. 8 to Rate Schedule FERC No. 151 (Supersedes Supplement No. 7)	do	Falmouth.
(7) Supplement No. 8 to Rate Schedule FERC No. 152 (Supersedes Supplement No. 7)	do	Frankfort.
(8) Supplement No. 8 to Rate Schedule FERC Nos. 153 to 156 (Supersedes Supplement No. 7).	do	Madisonvile.
(9) Supplement No. 8 to Rate Schedule FERC No. 157 (Supersedes Supplement No. 7)	do	Nicholasville.
(10) Supplement No. 8 to Rate Schedule FERC Nos. 158 and 159 (Supersedes Supplement No. 7).	do	Providence.
(11) Supplement No. 7 to Rate Schedule FERC No. 160 (Supersedes Supplement No. 6).	do	Berea College
(12) Supplement No. 7 to Rate Schedule FERC Nos. 161 and 162 (Supersedes Supplement No. 6).	do	Madisonvile.
(13) Supplement No. 7 to Rate Schedule FERC No. 163 (Supersedes Supplement No. 6).	do	Nicholasville.
(14) Supplement No. 8 to Rate Schedule FERC No. 164 (Supersedes Supplement No. 7).	WPS-83 (ODP)	Old Dominion.
(15) Supplement No. 7 to Rate Schedule FERC No. 165 (Supersedes Supplement No. 6).	do	Old Dominion.
(16) Supplement No. 10 to Rate Schedule FERC No. 83 (Supersedes Supplement No. 9).	P-2	Paris.

[FR Doc. 83-26424 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-654-000]

Lockhart Power Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Making Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

September 23, 1983.

On July 29, 1983, Lockhart Power Company (Lockhart) tendered for filing a proposed increase in rates for firm power service to the City of Union, South Carolina (Union).[1] The proposed rates would increase revenues from Union, Lockhart's only wholesale customer, by approximately $146,000 (4.6%) for the calendar year 1982 test period. Lockhart requests that the rates be made effective on September 27, 1983.

Notice of Lockhart's filing was published in the Federal Register with comments due on or before August 23, 1983. Union filed a timely protest, motion to intervene, request for a five month suspension, and request for a hearing. Union contends that Lockhart's filing improperly includes excessive allowances related to: (1) Regulatory expenses, (2) working capital, and (3) South Carolina revenue taxes. Union also claims that Lockhart has failed to synchronize interest expenses with its stated capital structure. Union further claims that Lockhart's requested rate of return is excessive, and that the loss factors used by Lockhart for Union result in an excessive allocation of costs to Union. Finally, Union alleges price squeeze.

On September 7, 1983, Lockhart filed an answer opposing Union's request for a five month suspension. In support of its filing, Lockhart contends that: (1) The proposed regulatory expenses are properly based on a reasonable estimate of the full cost of litigating the rates, (2) the proposed working capital allowance is less than Lockhart could have legitimately supported, and (3) the stated South Carolina revenue tax allowance properly reflects actual tax liability. Lockhart further contends that it would be unreasonable to require synchronization of interest expenses with an imputed capital structure, thereby understating the company's "real" Federal income tax liability. Lockhart also claims that its requested rate of return is conservative and that its loss factors understate the allocation of costs to Union. Finally, Lockhart denies that a price squeeze exists.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make Union a party to this proceeding.

As noted by Union, Lockhart has not synchronized interest expense for purposes of its income tax calculation with the interest portion of Lockhart's imputed capital structure.[2] Commission policy and practice have consistently required the computation of the long-term debt component of the interest expense tax deduction as the product of a utility's allocated rate base and the weighted cost of long-term debt employed in the capital structure.[3] Accordingly, we shall summarily dispose of this issue and require Lockhart to file revised rates consistent with such Commission precedent.

Our preliminary review of Lockhart's submittal and Union's pleading indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Lockhart's proposed rates for filing, as modified by summary disposition, and we shall suspend the rates as ordered below.

In *West Texas Utilities Co.*, Docket No. ER82-23-000, 18 FERC ¶61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable and may produce substantially excessive revenues, as defined in *West Taxas*, we would generally impose a maximum suspension. Our review in this docket suggests that Lockhart's proposed rates, after summary disposition, may produce substantially excessive revenues. Accordingly, we shall suspend the proposed rates for five months from sixty days after filing to become effective on February 28, 1984, subject to refund. We shall also initiate price squeeze procedures and phase the price squeeze issue in accordance with the policy and practice established in *Arkansas Power & Light Co.*, Docket No. ER78-339-000, 8 FERC ¶61,131 (1979).

The Commission orders:

(A) Summary disposition is hereby ordered with respect to Lockhart's failure to synchronize the interest expense tax deduction with its stated capital structure. Within thirty (30) days of the date of this order, Lockhart shall file revised rates and cost support to reflect this determination.

(B) Lockhart's proposed rates are hereby accepted for filing, as modified by summary disposition, and are suspended for five months to become effective on February 28, 1984, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Lockhart's rates.

(D) The Commission staff shall serve top sheets in this proceeding within (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby initiates price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze phase of this proceeding shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase.

[1] The rate schedule designation is as follows: *Lockhart Power Company*, Supplement No. 17 to Rate Schedule FPC Nos. 2 and 3 (Supersedes Supplement No. 16 to Rate Schedule FPC Nos. 2 and 3).

[2] Lockart is a wholly-owned subsidiary of Milliken and Company, Inc. Lockhart's investor-supplied capital consists exclusively of common stock, all of which is owned by Milliken and Company. For ratemaking purposes, Lockhart has employed an imputed capital structure which assumes a capitalization consisting of 50% long-term debt and 50% common equity. The company has failed to impute any interest expense for tax purposes consistent with the debt component of that capitalization.

[3] *E.g., Delmarva Power & Light Co.*, Opinion No. 185, 24 FERC ¶ 61,199 (1983); *Gulf States Utilities Company*, Docket No. ER82-375-000, 20 FERC ¶ 61,039 (1982); *Public Service Company of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123 (1981); *Union Electric Company*, Opinion No. 94, 12 FERC ¶ 61,239 (1980).

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26425 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC83-21-000]

Minnesota Power & Light Co.; Application

September 23, 1983.

Take notice that on September 9, 1983, Minnesota Power & Light Company ("MP&L") submitted for filing an "Application for Sale of Certain Facilities Pursuant to § 203 of the Federal Power Act Known as a Portion of MP&L's Grand Rapids 115/23 kV Substation and Related 23 kV Electric Distribution Lines."

MP&L states that this application is for the Commission's approval of the disposition of facilities owned by MP&L by sale of a portion of an electric substation and related 23 kV distribution facilities to Grand Rapids, Minnesota. According to MP&L, the facilities being transferred are a portion of the 115/23 kV Grand Rapids Substation near the City of Grand Rapids, Minnesota. Also included are certain 23 kV electric distribution feeders.

Additionally, MP&L states that the City of Grand Rapids is purchasing these facilities because they are used to serve the city with electricity which is supplied to Grand Rapids by MP&L on a wholesale basis. The City's wholesale service rate will be adjusted accordingly to reflect this additional capital investment. Grand Rapids will pay $13.98 per kW pursuant to the accepted rate schedule in FERC Docket No. ER81-764-000.

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, 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 motions or protests should be filed on or before September 30, 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. 83-26426 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC83-37-000]

National Fuel Gas Supply Corp.; Tariff Filing

September 23, 1983.

Take notice that on September 6, 1983, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, tendered for filing in Docket No. TC83-37-000 pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act Fourth Revised Sheet No. 32(B), superseding Third Revised Sheet No. 32(B), and Fourth Revised Sheet No. 32(C), superseding Third Revised Sheet No. 32(C), to National Fuel's FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1983, all as more fully set forth in the tariff sheets which are on file with the Commission and open to public inspection.

Such tariff sheets contain National Fuel's annual update of it Index of Entitlements to reflect changes in its agricultural requirements in compliance with Section 401 of the Natural Gas Policy Act of 1978 and Part 281 of the Commission's Regulations, it is indicated. National Fuel states that the Priority 2 entitlement changes have been approved by a Data Verification Committee and that copies of the tariff filing have been mailed to its customers and State Commissions.

Any person desiring to be heard or to make any protest with reference to said tariff sheets should on or before October 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secetary.

[FR Doc. 83-26427 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-472-000]

Natural Gas Pipeline Company of America; Application

September 23, 1983.

Take notice that on August 18, 1983, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP83-472-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its existing liquid extraction plant and five compressor units at field compressor Station 112 near Stinnett in Moore County, Texas, all as the more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to convert the existing liquids extraction plant to a dehydration facility for operation in conjunction with a new, non-jurisdictional cryogenic plant. This new plant is said to remove a greater quantity of hydrocarbons from the gas stream than the existing plant. This would improve residual gas quality, increase the efficiency of Applicant's mainline and decrease the probability of liquids fallout upon delivery of gas by Applicant to its customers, as well as permitting the extraction of valuable products, it is asserted. The five compressor units to be abandoned would be utilized for recompression of gas from the cryogenic plant, it is explained. These modifications are anticipated to cost $5,000,000, including construction of the cryogenic plant, modifications to the existing plant and compression, revisions to yard piping within Station 112 and changes in liquids and gathering lines. Existing transmission facilities would be utilized to deliver gas from Station 112 to Applicant's mainline.

Applicant states that, based on the history of certificates issued covering facilities at Station 112 the existing liquids extraction facility is arguably certificated and subject to the Commission's certificate jurisdiction. Applicant contends that such plants are not currently certificated by the Commission and requests abandonment authorization so that the regulatory treatment of this facility would be consistent with that accorded currently by the Commission to similar facilities.

Applicant states that the five compressor units are no longer required as a result of declining production from the West Panhandle Field.

Applicant states that the requested abandonment authorization would not result in any change in service to any of its customers or any significant impact on system capacity or operation. Any rate issues arising out of Applicant's liquids extraction operations would be handled on a routine basis in Applicant's general rate case filings, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 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 the 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commisison on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26429 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-647-000, ER83-648-000, ER83-649-000, and ER83-650-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Waiving Filing Requirements, Granting Summary Disposition in Part, Consolidating Dockets, and Establishing Hearing Procedures

September 23, 1983.

On July 29, 1983, New England Power Company (NEP) tendered for filing four separate proposed changes to rates and service agreements. The first filing is a proposed rate W-6 for service to NEP's primary wholesale customers (Docket No. ER83-647-000).[1] The W-6 rates would increase jurisdictional revenues by approximately $74,000,000 (8.93%) based on a calendar year 1984 test period. About $50 million of the increase reflects the inclusion of construction work in progress (CWIP) in rate base. NEP requests that the Commission suspend the W-6 rates for three months from October 1, 1983, to become effective on January 1, 1984, in order to coincide with the beginning of the test period. In the alternative, NEP has also filed a lower Rate W-6(I) which would increase jurisdictional revenues by approximately $51,100,000. In the event that the Commission suspends the W-6 rates for more than three months, NEP requests that Rates W-6(I) be accepted for filing and suspended for three months to become effective on an interim basis between January 1, 1984, and the effective date of the W-6 rates.

The second filing is a proposed change in NEP's service agreement with its affiliate, Narragansett Electric Company (Narragansett) (Docket No. ER83-648-000). The proposed change would increase fixed credits allowed to Narragansett on its purchased power billing for NEP's use of Narragansett's generation and transmission (G&T) facilities by approximately $1,517,400 annually. As in the case of NEP's primary rates, NEP requests that the revised Narragansett credit become effective, following a three-month suspension, on January 1, 1984. NEP has also filed an interim G&T credit, which would increase the fixed credits to Narragansett by approximately $940,600 annually. If the full credit revision is suspended for five months, NEP asks that the interim revision be made effective from January 1, 1984, until March 1, 1984. NEP further requests that certain provisions of section 35.13 of the Commission's filing requirements be waived to the extent that they might otherwise be considered applicable.

The third filing contains proposed changes in NEP's tariff for transmission of non-firm power outside of its backbone transmission system ("non-PTF service") (Docket No. ER83-649-000). This proposed change would increase revenues by approximately $612,000 (80.81%). NEP again requests that the revision become effective, following a three-month suspension, on January 1, 1984. NEP also filed an interim rate increase for non-PTF services of $554,000 (73.24%) in revenues, to be effective from January 1, 1984, if the full increase is suspended for more than three months.

The fourth filing is a proposed change in NEP's service agreement with its affiliate, Massachusetts electric Company (Masselec) (Docket No. ER83-650-000). This filing proposes to increase the credits allowed to Masselec for NEP's use of Masselec facilities by approximately $39,973 (4.28%). As with the other filings, NEP requests a three-month suspension and has filed an interim credit, in this case reflecting an increase of approximately $8,752 (0.94%).

NEP asks that Docket Nos. ER83-647-000, ER83-648-000, ER83-649-000, and ER83-650-000 be consolidated for purposes of hearing.

Notice of NEP's filings was published in the **Federal Register**, with comments due on or before August 22, 1983. On August 12, 1983, Green Mountain Power Corporation filed a motion to intervene in Docket No. ER83-647-000 in which it raised no substantive issues. On August 22, 1983, notices of intervention in Docket No. ER83-647-000 were filed by the Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island intervenors) and by the Attorney General of the Commonwealth of Massachusetts (Attorney General). On the same date, the Towns of Merrimac and Groveland, Massachusetts (Towns) jointly and the Town of Norwood, Massachusetts (Norwood) individually filed timely motions to intervene in Docket No. ER83-647-000. In addition, on August 22, 1983, the Department of Public Utilities of the Commonwealth of Massachusetts (DPU) filed a timely notice of intervention in each of the four dockets. The Rhode Island intervenors, the Attorney General, the DPU, and the Towns request that both the W-6 filing and the interim W-6(I) filing be suspended for five months.[2] In addition,

[1] *See* Attachment A for rate schedule designations.

[2] The Rhode Island intervenors, the Attorney General, and the Towns challenge the amount of

Continued

the Towns and the Rhode Island intervenors move for summary disposition of NEP's treatment of investment tax credit (ITC) benefits and of deferred taxes associated with the allowance for funds used during construction (ADUDC). Norwood did not raise any substantive issues.

The Rhode Island intervenors, on August 22, 1983, also filed timely notices of intervention in Docket Nos. ER83-648-000, ER83-649-000, and ER83-650-000. They challenge a number of matters in Docket No. ER83-648-000,[3] but raise no substantive issues in the other two dockets.

On August 22, 1983, the NEPCO Customer Rate Committee and its constituent towns and light plants (Committee) [4] filed a timely motion to intervene in Docket No. ER83-649-000 and ER83-650-000 in which they request that the transmission rate filing and the Masselec credit filing be suspended for five months.[5]

On August 29, 1983, the Attorney General filed a motion to intervene out of time in Docket Nos. ER83-648-000, ER83-649-000, and ER83-650-000. As grounds for the late intervention, the Attorney General asserts that those filings appear to directly affect the W-6 filing, that the Attorney General is authorized to represent the interest of Masselec ratepayers, that no party will be prejudiced by the late intervention, and that NEP does not object to the motion.

On September 7, 1983, NEP filed an answer to the motions for partial summary disposition in Docket No. ER83-647-000.[6] NEP argues that summary disposition of the ITC issue is not appropriate because the Commission has expressed its intention to reevaluate its policy on this issue, because the intervenors are challenging factual claims, because the Internal Revenue Code and its legislative history do not require sharing of ITC benefits, and because the "special circumstances" of NEP's case justify retention of the entire ITC benefits. NEP also asserts that summary disposition with respect to the AFUDC issue is not appropriate because NEP used a similar approach (a net-of-tax methodology) in its last wholesale rate filing, because the methodology lowers the cost of new plant when it goes into service and prevents current ratepayers (who do not pay construction-related interest) from receiving the benefits of the associated tax deduction, because Commission Order No. 144 [7] indicated that NEP's approach might have certain advantages, because the proposal would not increase earnings, and because the Towns concede that the proposal appears on its face to be fair.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices and motions to intervene serve to make the Rhode Island intervenors, the DPU, the Towns, Norwood, and Committee parties to this proceeding. Furthermore, we find that good cause exists to grant the motion of the Attorney General to intervene out of time. Accordingly, that motion will be granted.

In its filing, NEP proposes to retain investment tax credit (ITC) benefits, by flowing the ITC's through entirely to retained earnings. In the past, NEP has always flowed the credits through to the ratepayers by amortizing them over the life of the property to which the credits were related. The Towns and the Rhode Island intervenors argue for summary disposition of the item on the grounds that there is no Commission precedent for NEP's proposal. We acknowledge that, in the past, the Commission has consistently taken a position contrary to that advocated by NEP. However, in *Southwestern Public Service Co.*, 22 FERC ¶ 61,341 (1983), we indicated that we are considering a change in our policy to permit electric utilities to realize complete flow-through of ITC's to retained earnings. Wihtout prejudging the outcome of the issue in this case, we believe that it would be inappropriate to summarily dispose of the question when our policy may change prior to the conclusion of these proceedings.

NEP has also proposed to reduce its accumulated deferred income tax (ADIT) balances for amounts related to AFUDC accrued on a gross-of-tax basis prior to March 1, 1983, related to projects still under construction, and to instead reduce the construction balances. NEP states that this adjustment is required to ensure a consistent treatment of tax benefits related to AFUDC because, since March 1, 1983, NEP has adopted a net-of-tax AFUDC approach. NEP states that its use of a net-of-tax AFUDC method was accepted in Docket Nos. ER82-702-000, *et al.* Our review indicates that in its prior rate increase filing, NEP did propose a net-of-tax AFUDC calculation and that neither the Commission trial staff nor the intervenors objected. However, Docket Nos. ER82-702-000, *et al.*, were the subject of a settlement which serves to set no principle or precedent as to individual issues. Additionaly, we note that the Commission's current policy required AFUDC to be computed using the gross-of-tax method unless some other regulatory agency having jurisdiction over the company requires the net-of-tax method.[8] NEP has not alleged that it is required to use a net-of-tax AFUDC rate at the State level.[9] Accordingly, NEP's use of a net-of-tax AFUDC method is inappropriate and will be summarily rejected. NEP will be directed to file

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CWIP in NEP's rate base and the amount of real estate and personal property taxes. In addition, the Towns and the Rhode Island intervenors challenge the following items in NEP's filing: (1) Rate of return; (2) maintenance expenses associated with the overhaul of Brayton Point No. 3; (3) purchased power costs for capacity from the Yankee plants (assuming a favorable IRS ruling on Yankee decommissioning costs); (4) possible overcollection due to the inclusion of a new coal collier in rate base; and (5) the accuracy of Period II estimates generally. The DPU challenges the inclusion of costs associated with the cancelled Pilgrim No. 2 generating plant, the amount of CWIP in rate base, and the treatment of oil conservation adjustment revenues. The Rhode Island intervenors also challenge the write-off of costs associated with Pilgrim No. 2.

[3] The issues raised include: (1) The cost support for additional charges associated with support of a transformer at Blackstone Valley Electric Company's West Farnum Substation; (2) land held for future use; and (3) return on equity. However, the Rhode Island intervenors do not oppose the three months suspension requested in Docket No. ER83-648-000.

[4] Representing the Light Departments of the Towns of Ashburnham, Boylston, Danvers, Georgetown, Groton, Groveland, Hingham, Holden, Hull, Ipswich, Littleton, Mansfield, Marblehead, Merrimac, North Attleborough, Paxton, Peabody, Princetown, Shrewsbury, Sterling, Wakefield, and West Boylston, Massachusetts.

[5] As grounds for a maximum suspension of the transmission rates, Committee challenges the following: (1) Return on equity; (2) plant balances related to NEP's T-1 and T-3 rates; (3) volumes of kW to be wheeled under the T-1 and T-3 rates; (4) cost justification for the T-2 rate; (5) allocation of plant investment related to the T-3 rate; and (6) inclusion of T-1 costs in the T-3 rate. Committee asserts that the credit filing should be suspended for five months on the grounds that NEP's supporting data are "only conclusionary."

[6] NEP also filed responses to the protests in all four dockets. Although NEP styled these pleadings as answers to motions for a five month suspension, they are in reality answers to protests. As such, they are not permitted by Rule 213(a)(2) and will not be considered by the Commission.

[7] FERC Statutes and Regulations Preambles, 1977-81, ¶ 30,254 (1981).

[8] *See, e.g., Kentucky Utilities Co.*, Opinion No. 184, 24 FERC ¶ 61,156 (1983); *Southern California Edison Co.*, Opinion No. 145, 20 FERC ¶ 61,301 (1982). The language from Order No. 144 cited by NEP does not mandate a contrary result. The Commission only observed that deducting construction-related accumulated deferred income taxes from AFUDC instead of rate base would have certain advantages. The Commission specifically declined to permit this, however, without issuing another proposed rule and receiving comments. No such rule has been proposed to date and the Commission's existing rules specifically require the rate base reduction for deferred taxes related to construction, 18 C.F.R. § 35.25 (b)(2).

[9] All but 0.15% of NEP's revenues are FERC jurisdictional.

revised rates[10] and a revised cost of service which reflect this decision. We further note that summary disposition concerning NEP's use of a net-of-tax AFUDC rate effectively moots NEP's proposed adjustment for ADITC balances.

Our preliminary examination of NEP's proposed rates and credits indicates that they have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates and credit modifications for filing, as modified by summary disposition, and we shall suspend them as ordered below.

We addressed the Commission's suspension policy in *West Texas Utilities Company*, Docket No. ER82-23-000 (February 26, 1982). As explained there, where our preliminary examination indicates that revised rates may be unjust and unreasonable and may be substantially excessive as described in *West Texas*, we will ordinarily suspend the rates for five months. In the case of NEP's W-6 rates and the proposed facilities credits applicable to Masselec and Naragansett, preliminary reviews suggests that the proposed rates and credit revision may produce substantially excessive revenues. Therefore, we shall suspend the proposed W-6 rates and the full Masselec and Narragansett credit revisions for five months, to become effective, as modified, on March 1, 1984, subject to refund.

Our preliminary review, on the other hand, suggests that the interim W-6(I) rates, interim Masselec credits, interim Narragansett credits, and proposed full wheeling rates may not yield excessive revenues. As noted, NEP has requested a suspension of three months from October 1, 1983, so that the revised rates will coincide with the commencement of the 1984 test period. Accordingly, we shall accommodate that request and suspend these rates for three months to become effective, subject to refund, on January 1, 1984, and to continue in effect until March 1, 1984.

Given the nature of NEP's credit filings and the relationship of those credits to NEP's wholesale cost of service, we find that good cause exists to waive the outstanding filing requirements in Docket Nos. ER83-648-000 and ER83-650-000. Inasmuch as common questions of law and fact may be presented in Docket Nos. ER83-647-000, ER83-648-000, ER83-649-000, and ER83-650-000, we shall consolidate those dockets for purposes of hearing and decision.

The Commission orders:

(A) the requests for summary disposition with respect to NEP's proposal to retain investment tax credits is hereby denied, without prejudice. Summary disposition is hereby granted as to NEP's use of the net-of tax method of calculating AFUDC. Within thirty (30) days of the date of this order, NEP shall refile its W-6 rates and its full Masselec and Narragansett credit revisions (together with revised cost support) to reflects his determination.

(B) The motion by the Attorney General of the Commonwealth of Massachusetts to intervene out of time in Docket Nos. ER83-647-000, ER83-649-000, and ER83-650-000 is hereby granted subject to the Commission's Rules of Practice and Procedure.

(C) NEP's proposed W-6 rates and the proposed full Masselec and Narragansett facilities credit modifications are hereby accept for filing, as modified by summary disposition, and suspended for five months to become effective, subject to refund, on March 1, 1984. Waiver of section 35-13 of the Commission's filing requirements is hereby granted to the extend necessary to permit acceptance of these filings.

(D) NEP's proposed interim W-6(I) rates, interim Masselec credits, interim Narragansett credits, and full wheeling rates are hereby accepted for filing and suspended for three months to become effective, subject to refund, on January 1, 1984.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEP's rates and credits.

(F) Docket Nos. ER83-647-000, ER83-648-000, ER83-649-000, and ER83-650-000 are hereby consolidated for purposes of hearing and decision.

(G) The Commission staff shall serve top sheets in this proceeding on or before October 11, 1983.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held wihtin approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

NEW ENGLAND POWER COMPANY: DOCKET NOS. ER83-647-000, ER83-648-000, ER 83-649-000 AND ER83-650-000—RATE SCHEDULE DESIGNATIONS

Designation	Description
New England Power Company:	
(1) 28th Revised Sheet No. 1 and 29th Revised Sheet No. 2 of Schedule II-A under FPC Electric Tariff, Original Volume No. 1 (Supersedes 27th Revised Sheet No. 1 and 28th Revised Sheet No. 2).	Phase I—Rate W-6(I), Primary Customers.
(2) 29th Revised Sheet No. 1 and 30th Revised Sheet No. 2 of Schedule II-A under FPC Electric Tariff, Original Volume No. 1 (Supersedes 28th Revised Sheet No. 1 and 29th Revised Sheet No. 2).	Phase II—Rate W-6, Primary Customers.
(3) Supplement No. 16 to Service Agreement under FPC electric Tariff Original Volume No. 1 (Supersedes Supplement Nos. 11-15 to Service Agreement).	Phase I—Narragansett Electric Company G&T Credits.
(4) Supplement No. 17 to Service Agreement under FPC Electric Tariff, Original Volume No. 1 (Supersedes Supplement No. 16 to Service Agreement).	Phase II—Narragansett Electric Company G&T Credits.
(5) 1st Revised Sheet No. 2 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes Original Sheet No. 2).	Phase II—Wheeling Rates.
(6) 4th Revised Sheet No. 3 of Schedule II under FERC Electric Tariff, Original Volume No. (Supersedes 3rd Revised Sheet No. 3).	Do.
(7) 1st Revised Sheet No. 4 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes Original Sheet No.4).	Do.
(8) Supplement No. 5 to Service Agreement under FPC Electric Tariff, Original Volume No. 1 (Supersedes Supplement Nos. 2, 3 and 4).	Phase II—Massachusetts Electric Company Facilities Credits.
(9) Supplement No. 6 to Service Agreement under FPC Electric Tariff, Original Volume No. 1 (Supersedes Supplement No. 5).	Phase II—Massachusetts Electric Company Facilities Credits.
Naragansett Electric Company:	
(10) Supplement No. 16 to Rate Schedule FPC No. 38 (Concurs in (3) and (4) above).	Certificate of Concurrence.

[10] Given our finding below that certain of NEP's rates may not produce substantialy excessive revenues, we shall not require refiling of those rates at this time.

NEW ENGLAND POWER COMPANY: DOCKET NOS. ER83-647-000, ER83-648-000, ER 83-649-000 AND ER83-650-000—RATE SCHEDULE DESIGNATIONS—Continued

Designation	Description
Massachusetts Electric Company: (11) Supplement No. 1 to Rate Schedule FERC No. 52 (Concurs in (8)&(9) above).	Do.

[FR Doc. 83-26428 Filed 9-27-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-728-000]

Northern Indiana Public Service Co.; Filing

September 23, 1983.

The filing Company submits the following:

Take notice on August 29, 1983, Northern Indiana Public Service Company (NIPSCO) tendered for filing proposed changes in its FERC Electric Wholesale Service Tariff, Fourth Revised Volume No. 1 for service to its one Rural Electric Membership Corporation customer and its nine municipal customers. The Substitute First Revised and First Revised Tariff Sheets propose rate changes which would increase annual revenues from jurisdictional sales and service under the proposed rate level by approximately $27,252,183 based on the twelve-month period ending December 31, 1983.

Copies of the filing were served upon NIPSCO's jurisdictional customers and the Public Service Commission of Indiana.

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, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All such motions or protests should be filed on or before October 3, 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. 83-26430 Filed 9-27-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-497-000]

Northern Natural Gas Co. and Southern Natural Gas Co.; Application

September 23, 1983.

Take notice that on September 2, 1983, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, and Southern Natural Gas Company (Southern), First National-Southern Natural Building, Birmingham, Alabama 35203 (Applicants), filed in Docket No. CP83-497-000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and transportation of natural gas pursuant to an exchange and transportation agreement between Applicants dated October 22, 1981, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to deliver or cause to be delivered to Northern up to 5,000 Mcf (exchange volume) of natural gas per day in Roberts County, Texas. In exchange, Northern proposes to deliver or cause to be delivered to Southern thermally equivalent volumes of natural gas at an existing interconnection between Southern and Columbia Gulf Transmission Company in East Carroll Parish, Louisiana, and/or at an existing interconnection between Southern and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in Clarke County, Mississippi.

In addition, Applicants propose to exchange volumes in excess of the exchange volume that Southern may have available. Northern proposes to transport such excess gas, up to 15,000 Mcf per day, on a best-efforts, interruptible basis. If Northern transports volumes in excess of the exchange volume, Northern proposes to charge Southern 7.08 cents per Mcf of Natural gas that is back-hauled on its systems. If Northern has cause to reverse the system flow, Northern proposes to charge Southern 14.16 cents per Mcf of natural gas forward-hauled. Applicants maintain that because the proposed exchange is mutually beneficial there would be no fee for the proposed exchange of gas.

Applicants assert that the arrangements proposed eliminate the duplication of facilities which would be necessary for Applicants to attach their respective gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 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 be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-26431 Filed 9-27-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-494-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

September 23, 1983.

Take notice that on September 2, 1983, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP83-494-000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157. 205) that Northwest proposes to construct and operate certain natural gas facilities and reallocate natural gas service in order to provide The Washington Water Power Company (Water Power), an existing customer of Northwest, with an additional delivery point under the authorization issued in Docket No.

CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to construct and operate the Keystone Meter Station to be located in Adams County, Washington, to provide natural gas for resale to Water Power. It is asserted that the proposed Keystone Meter Station would be utilized by Water Power to provide service to a new fertilizer distribution center. Northwest indicates that the maximum daily delivery obligations will be 10,100 therms per day through the proposed meter station.

Northwest states that the additional volumes of natural gas to be sold to Water Power would be within the certificated volumes of natural gas which Northwest has heretofore been authorized to sell and deliver to Water Power. Northwest further states that no increase in the total daily contract demand which Northwest is authorized to sell and deliver is proposed nor would any such increase result from the proposed service.

Northwest states that the volumes of natural gas to be sold through the proposed Keystone Meter Station would be reallocated from the existing Spokane Mead delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26132 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-19-003]

Northwest Pipeline Corp.; Amendment

September 23, 1983.

Take notice that on September 1, 1983, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP81-19-003 an amendment to its pending application in Docket No. CP81-19-000, as amended, pursuant to Section 7 of the Natural Gas Act so as to reflect that Northwest is willing to accept a conditioned certificate of public convenience and necessity in Docket No. CP81-19-000, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

It is stated that Washington Natural Company (Washington Natural), an intervenor in this proceeding, has requested two conditions to any certificate which may be issued by the Commission in Docket No. CP81-19-000. It is further stated that if such conditions are acceptable to Northwest, then Washington Natural would withdraw its request for formal hearing in this proceeding. The conditions proposed by Washington Natural are as follows:

1. All firm on-system sales requirements under Rate Schedules ODL-1, DS-1, and PL-1 and under any similar or superseding rate schedules for *firm* on-system sales shall have priority over deliveries under Rate Schedule ODL-1 at the Ignacio delivery point.

2. Northwest will not deliver gas at Ignacio under Rate Schedule ODL-1 for off-system requirements on any day when Northwest is unable to deliver full purchase requirements to customers purchasing under Rate Schedules ODL-1, DS-1, and PL-1 and any similar or superseding rate schedules providing for firm on-system sales.

Northwest states it is agreeable to the two conditions proposed by Washington Natural.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26133 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-493-000 and ER82-494-000]

Pennsylvania Power & Light Co.; Compliance Filing

September 23, 1983.

Take notice that on September 6, 1983, Pennsylvania Power & Light Company ("PP&L") submitted for filing the journal form of the accounting entries made to effect the treatment of test power, pursuant to Paragraph (B) of Opinion No. 176 issued on June 22, 1983 in the consolidated proceeding of Docket Nos. ER82-493-000 and ER82-494-000.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 4, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26403 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-48-000]

Producer's Gas Co.; Complaint Filed

September 23, 1983.

Take notice on August 30, 1983, Producer's Gas Company (PGC) filed a complaint with the Federal Energy Regulatory Commission (commission) against Southport Exploration, Inc. and Kaiser-Francis Oil Company (respondents), pursuant to Rules 206 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 385.207. Specifically PGC requests that the Commission enter an order declaring that certain categories of prepayments, if made to the respondents under the take-or-pay clauses contained in their contracts, would violate the maximum lawful price provisions of Title I of the Natural Gas Policy Act of 1978 (NGPA).

Specifically, PGC avers that the respondents sell natural gas to PGC pursuant to certain intrastate contracts which contain take-or-pay provisions. Based upon the take-or-pay provisions

contained in their contracts with PGC, the respondents have brought separate suits against PGC in the United States District Court for the Northern District of Oklahoma [1] alleging, *inter alia*, that contrary to the take-or-pay clauses contained in their contracts, PGP has failed to pay for volumes of natural gas of which it has been unable to take receipt. PGC alleges that only the Commission has the expertise to determine whether payment pursuant to a take-or-pay clause for volumes not taken would constitute a violation of Title I of the NGPA. PGC asks that the Commission request the District Court to stay further proceedings in the respondents cases and refer these disputes to the Commission for resolution.

Any person desirng to be heard or to make any protest to this complaint should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26404 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-24-000, EL83-24-001 and ER82-793-000]

Seminole Electric Cooperative, Inc., et al.; Order Resolving Petitions for Declaratory Relief and Summary Disposition, Granting Late Intervention, Denying Leave To Answer, Instituting Investigation, Consolidating Dockets, Terminating Docket, and Establishing Procedures

September 23, 1983.

On June 9 and 10, 1983, Seminole Electric Cooperative, Inc. (Seminole) [1] and Florida Power & Light Company (FPL) filed separate petitions in Docket Nos. EL83-24-000 and EL83-24-001, respectively, requesting that the Commission issue a declaratory order interpreting the terms of the September 1, 1982 FPL-Seminole Service agreement which governs full requirements service currently furnished to Seminole at 36 delivery points in FPL's service territory.[2] The need for such interpretation arises from Seminole's recent decision to shift from full to partial requirements service when Seminole Unit No. 1, a 600 MW coal-fired generating unit, begins commercial operation in July, 1983. At that time, Seminole intends to replace a substantial portion of its members' FPL-supplied baseload requirements with the Unit No. 1 output, and desires to purchase its members' remaining baseload and total intermediate/peaking requirements for FPL at a partial requirements rate.

At issue here is whether Seminole must provide notice pursuant to the termination provisions of the Service Agreement before it can shift from full to partial requirements service. The dispute focuses on language in the Agreement which states, in pertinent part, ". . . this Service Agreement shall remain in effect from the date of execution with respect to each delivery point shown on an Exhibit A attached hereto, or on any successor exhibit, until terminated by Seminole or Company by giving to the other party * * * one year's notice of termination as specified above * * *." The referenced specifications state that "* * * such notice shall specify the delivery point(s) with respect to which service is to terminate, and specifying [sic] the date of termination as to each such delivery point * * *."[3]

FPL contends that this language unequivocally requires that before partial requirements service can begin, Seminole must provide one year's written notice of termination of the full requirements service currently provided under the Service agreement. Otherwise, according to FPL, Seminole would be able to switch back and forth between full and partial requirements rate schedules at will, and could divert FPL's load without appropriate warning. In so doing, FPL argues that Seminole would not only circumvent the ratchet and contract demand provisions applicable to partial requirements service, but would also undermine FPL's ability to plan its generation. FPL states that Seminole supplied the requisite written notice on May 20, 1983, and therefore asks the Commission to declare that Seminole is contractually bound to take and pay for full requirements service at each of the 36 delivery points currently served by FPL, until May 20, 1984. FPL additionally seeks summary disposition, asserting that there are no factual issues in dispute.

Seminole, on the other hand, contends that its shift from full to partial requirements service requires no notice of termination, because it merely entails a change in the type of service provided, and not a termination of service altogether. Seminole argues that its transition from full to partial requirements service will occur automatically, under the Service Agreement, without advance written notice, upon the in-service date of Seminole Unit No. 1. According to Seminole, once it uses its own generation to serve member loads in FPL's service territory, it will no longer qualify for full requirements service and can only be served under FPL's applicable partial requirements tariff. Seminole contends that to hold otherwise would contradict the plain language of the applicability clause contained in the Service Agreement, which provides as follows:

2. For said electric service, . . . Seminole shall pay to Company monthly during the term of this Agreement at the rates and charges and under the provisions contained

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[1] Southport Exploration Inc. v. Producer's Gas Company, (No. 83-C-550-B) and Kaiser Francis Oil Company v. Producer's Gas Co. (No. 83-C-400-C).

[1] Seminole is a generation and transmission cooperative serving eleven distribution cooperatives in the State of Florida. The instant dispute affects only six Seminole members who signed the September 1, 1982 FPL-Seminole Service Agreement (Seminole Motion to Intervene at 2).

[2] The executed Service Agreement was accepted for filing by letter order of the Director of the Commission's Office of Electric Power Regulation issued on September 23, 1982, in Docket No. ER82-833-000. The rates currently in effect are those being collected, subject to refund, in Docket No. DE82-793-000.

[3] The full text of Article 6 reads as follows: This Service Agreement shall remain in effect from the date of execution with respect to each delivery point shown on an Exhibit A attached hereto, or on any successor exhibit, until terminated by Seminole or Company by giving to the other party at least two (2) years written notice. Such notice shall specify the delivery point(s) with respect to which service is to terminate and specifying the date of termination as to each such delivery point; provided, however, the initial term for service at a delivery point stated in an Exhibit A shall not be less than five (5) years from the original effective date shown on the Exhibit A for such delivery point. *Company may, during the term of this agreement, file for or otherwise legally effect a rate increase; provided, however, upon such rate filing by Company, Seminole may, notwithstanding the foregoing five-year term provision of this Paragraph 6, at anytime within one year following such filing, give one year's notice of termination as specified above;* provided further, however, in no event may Seminole, without the written consent of Company, terminate service at any delivery point which will not have been in service for at least five (5) years. (Emphasis added).

Because FPL filed a rate increase in Docket No. ER82-793-000 on September 13, 1982, the instant dispute involves the applicability of the one year notice requirement in the Agreement rather than the otherwise effective two year notice.

in the *applicable Sale for Resale Rate Schedule*, or any successor schedule(s) * * * (Emphasis added).

The sale for resale rate schedules, in turn, contain the following applicability provisions of their own:

Full Requirements (FR–1): To electric service for total power requirements at existing and future delivery points * * *; provided, however, * * * [that] this schedule shall not apply to services at those delivery points to which a Sale for Resale partial requirements rate is applicable.

Partial Requirements (PR–2): To electric service for the partial power requirements at existing and future delivery points to complement * * * generating capacity and/or firm power purchases * * *.

In light of these provisions, Seminole contends that when its needs become such as to make PR–2, by its own terms, the "applicable" rate schedule, the Service Agreement does not require Seminole to furnish notice of termination in order to receive PR–2 service. Accordingly, Seminole asks the Commission to declare that, upon the in-service date of Unit No. 1, Seminole will automatically become a partial requirements customer of FPL and hence must be served under a partial requirements rate schedule.

Seminole notes that if the Commission decides the termination issue in its favor, Seminole will become a partial requirements customer of FPL in 1983, when Unit No. 1 begins service. If the Commission decides the issue against Seminole, it will instead become a partial requirements customer in 1984. Since, in either event, Seminole will purchase partial requirements service from FPL, Seminole contends that it must be given an opportunity to challenge the present PR–2 rate design, level, terms and conditions insofar as they may apply to Seminole. In addition, Seminole seeks to show that a stratified rate is more appropriate for partial requirements service to Seminole than FPL's PR–2 rate, which is based on average system cost. Accordingly, Seminole asks the Commission to declare the issue ripe for trial either in Docket No. ER82–793–000, a currently pending FPL rate case, or in a separate complaint proceeding ordered pursuant to section 206 of the Federal Power Act.

Finally, because Seminole estimates that it will lose $1.5 million per month if forced to remain a full requirements customer beyond the Unit No. 1 in-service date, Seminole requests expedited action on its petition. In this regard, FPL states that it is willing to provide Seminole with PR–2 service once Unit No. 1 begins operating but, in that event, FPL reserves its right to sue Seminole for the $20–30 million annual revenue loss FPL would incur as a result of Seminole's allegedly premature termination of full requirements service.

Notice of the filings was published in the **Federal Register**, with comments due on or before July 1, 1983. On July 5, 1983, the Florida Cities * filed an untimely motion to intervene. The Florida Cities state that they are intervenors in Docket No. ER82–793–000, FPL's current rate case, and that they desire to participate in whatever proceedings may be ordered in this docket because "the outcome of certain matters in controversy can have impacts on them."

Also on July 5, 1983, Seminole responded to FPL's petition and moved to intervene in Docket No. EL83–24–001. Seminole's pleading reiterates the facts and arguments presented in its petition for declaratory orders, and in addition, disputes FPL's specific claims that notice of termination dates from May 20, 1983; that Seminole's shift from full to partial requirements service will cause FPL to incur $20–$30 million in lost revenues; and that disruption to FPL would result if FPL's customers could switch from full to partial requirements service at will. On the contrary, Seminole states that throughout its wholesale rate history, FPL has freely allowed its customers to switch, without formal termination notice, from full to partial requirements service (or vice versa), as their service characteristics changed over time. Finally, with respect to the notice date, Seminole asserts that if the Commission determines notice is indeed required, notice properly dates from March 4, 1983 (rather than May 20, 1983), when Seminole purportedly furnished FPL actual, if not written, notice that it planned to use Seminole Unit No. 1 output to serve member loads currently served by FPL.

On July 5, 1983, FPL answered Seminole's original pleading. FPL disputes Seminole's construction of the term "applicable rate schedule," noting that Service Agreement Exhibit A specifies, for each of the 36 delivery points served by FPL, that the "applicable rate schedule" is "FR or any successor schedule(s)." Since FPL's September 1983 rate filing in Docket No. ER82–793–000 tendered Rate Schedule FR–1 as the successor to Rate Schedule FR, FPL contends that Seminole cannot "succeed" to partial requirements service under the applicability clauses of either the Service Agreement or the FR–1 and PR–2 rate schedules. In addition, FPL questions the relevance to the instant controversy of FPL's past practice of allowing customers to switch, without formal termination notice, between full and partial requirements service. FPL notes that when this situation existed, FPL served all of its wholesale customers under a single rate schedule, which is now superseded and which did not distinguish between customers who owned their own sources of generation, and those who did not. Finally, with respect to the stratified rate issue, FPL urges that Seminole's complaint be dismissed for failure to make a prima facie showing that a stratified partial requirements rate design would reflect FPL's cost of serving Seminole more accurately than FPL's existing average system cost rate design. Alternatively, if the Commission finds that a hearing on the stratified rates issue is warranted, FPL requests that the issue be heard separately under sections 206 of the Federal Power Act, rather than consolidated with FPL's current rate proceeding in Docket No. ER82–793–000. FPL believes that the question of Seminole's entitlement to a stratified rate is beyond the scope of a proceeding involving an application to increase the level of rates based on average system costs, and that injection of the issue into Docket No. ER82–793–000 would only postpone final resolution of the existing issues in that case, and delay potential refunds.

On July 20, 1983, FPL filed an answer to the Cities' motion to intervene, stating that it does not oppose the Cities' intervention. Also on July 20, FPL filed a motion for leave to answer, as well as its answer, to Seminole's July 5 protest. FPL requests that it be permitted to respond so that it may address an affidavit of Timothy Woodbury which was submitted by Seminole. FPL also seeks to discuss the case law raised in Seminole's protest for the proposition that, if notice is required under the contract, actual oral notice (rather than written notice) should suffice.

On August 3, 1983, Seminole opposed FPL's motion and requested that FPL's answers be stricken. Seminole urges that the submittal or responsive pleadings should not be permitted to continue *ad infinitum* and suggests that FPL has not demonstrated good cause for its latest pleading. According to Seminole, its introduction of the Woodbury affidavit was in response to an earlier pleading filed by FPL and should not be viewed as a surprise justifying counter-argument. Seminole

* The Florida Cities include the Cities of Clewiston, Green Cove Springs, Homestead, Jacksonville Beach, Starke, and Vero Beach, the Fort Pierce Utility Authority of the City of Fort Pierce, and the Lake Worth Utilities Authority.

has not advanced a similar argument concerning the case law cited for the first time in its July 5 protest, but has responded to FPL's interpretation of those cases.

Discussion

Given the early stage of this proceeding, the potential interest of the Florida Cities, and the fact that no undue delay or prejudice should occur as a result of the late intervention, we find that good cause exists to permit the Florida Cities to intervene out of time.

We believe that a close question is presented as to whether FPL's July 20 motion for leave to answer Seminole's protest should be granted. We agree that, at some point, responsive pleadings must cease. Arguably, FPL's answer does address new maters raised for the first time in Seminole's protest. However, neither FPL's answer not Seminole's subsequent pleading enhances the record in this proceeding by contributing new facts; the parties have simply expressed their conflicting positions concerning the interpretation of affidavits and case precedent. With regard to the affidavits, the Commission is able to read the sworn positions of the affiants without the benefit of extrinsic explanation by counsel. As to the case law cited, we explain below that the Commission need not reach the applicability of that precedent in this case. For these reasons, we shall deny FPL's motion for leave to answer and we shall reject the accompanying answer as well as the responsive matter in Seminole's motion to strike.

Based on our review of the Service Agreement, rate schedules, and pleadings, we conclude that Seminole is obligated to provide notice of termination prior to shifting from full to partial requirements service. We believe that the Service Agreement unambiguously requires Seminole to furnish one year's notice before altering the existing full requirements service relationship created by the contract. While we agree with Seminole that it could qualify for PR–2 service when it begins serving FPL's FR–1 delivery points with Unit No. 1 output, we do not believe it follows that this technical eligibility for partial requirements service relieves Seminole of its contractual obligations under the full requirements service agreement to serve notice of termination, or that it automatically amends the agreement without FPL's consent.

Moreover, we are not persuaded by Seminole's argument that it seeks to change, rather than terminate, service from FPL or by Seminole's reference to the "applicable" rate schedule language in the Service Agreement. We think it clear that the Service Agreement calls for FPL to furnish and Seminole to pay under the "Applicable sale for resale rate schedule" for the service expressly agreed upon by the parties, *viz.*, full requirements service. While Seminole is certainly free to elect alternative power supply strategies and to effectively "disqualify" itself from the agreed-upon service, in doing so it must provide the advance notice to which it also agreed. Furthermore, both in form and in substance, Seminole is seeking to terminate the existing full requirements service relationship in order to substitute a preferred form of service. We do not think that Seminole would dispute the proposition that FPL could not unilaterally effectuate a change from full to partial requirements service absent notice consistent with the Agreement and it is apparent that Seminole has reserved no greater rights for itself. Thus, apart from equitable considerations such as FPL's concern with rational system planning or Seminole's attempt to ameliorate an excess capacity situation, we conclude that the parties' Service Agreement is susceptible only to the interpretation which FPL has advanced.

Seminole argues alternatively that if notice is required for a switch from full to partial requirements service, such notice was given by Seminole on March 4, 1983, when it communicated to FPL during settlement negotiations its plans to import 200 MW of Seminole Unit No. 1 power into the FPL service area. (Seminole protest, p. 19; Attachment A at 1). Seminole contends that such actual notice should be deemed to satisfy the written notice requirement under the circumstances of this case. FPL argues, to the contrary, that Seminole must give written notice and that, in any event, Seminole at the March 4, 1983 meeting merely indicated that it was considering the possibility of using some of its capacity to serve FPL loads and that, at a related meeting on March 15, 1983, Seminole's Timothy Woodbury "stated, with emphasis, that Seminole had not given, and was not then giving, notice of termination of its relationship as a full requirements customer." (FPL petition, Appendix B, affidavit of J.K. Daniel). Further, FPL states that even in its letter of May 9, 1983, Seminole was still conditioning its use of Seminole Unit No. 1 capacity to serve load in FPL's service area on its ability to get from FPL or this Commission a new partial requirements rate. (FPL petition, pp. 17–18). Seminole's Mr. Woodbury counters that his statement was mischaracterized and that at the March 15, 1983 meeting he only said that no notice was required. (Seminole protest, Attachment A, affidavit of Timothy S. Woodbury, p. 2). Further, he insists that Seminole's plans were not conditioned on receiving a stratified partial requirements rate. (*Id.*, pp. 2–3).

We need not reach the question of whether actual notice might satisfy the written notice requirement here since we find that Seminole did not give FPL unconditional actual notice, oral or written, prior to May 20, 1983. Even assuming Seminole's statement of the facts to be correct, Mr. Woodbury himself states that Seminole indicated its intentions to serve part of its member's load in FPL's service area "provided that it could obtain an appropriate partial requirements rate" from FPL. (Seminole protest, Attachment A, p. 1). Likewise, the May 9, 1983 letter from Seminole's Executive Vice President and General Manager, Mr. Walbridge, to FPL states Seminole's intentions "provided that" Seminole receives a partial requirements rate from FPL that is "nondiscriminatory and reflective of the cost to serve." (FPL petition, Appendix C). Further, Mr. Walbridge stated in that letter that Seminole "must and will exercise every option at its disposal" to utilize its members resources and ensure them equitable treatment. (*Id.*) We read these statements of intention to commit capacity to FPL's load as being clearly conditional and therefore too equivocal to constitute definite notice. Further, Mr. Woodbury appears from his own affidavit to have avoided either confirming or denying that notice of termination was being given. (Seminole protest, Attachment A). Under these circumstances, we do not think FPL could be said to have actual notice of Seminole's definite plans to terminate full requirements service until the letter stating so unconditionally on May 20, 1983. This letter alone provides not only unconditional notice, but also the *written* notice of the *date* on which the service to *each delivery point* will terminate as required by the Service Agreement.

Based on the foregoing, we conclude that notice of termination was required and that such notice by Seminole was effective as of May 20, 1983. Accordingly, we shall grant FPL's requests for declaratory relief and summary disposition with regard to the notice issue. We add, however, that with respect to the two delivery points which have been in service for less than five years, termination of full requirements service will not become effective until five years from the in-

service dates of those delivery points, unless FPL consents to an earlier termination under paragraph 6 of the Service Agreement.

With respect to Seminole's partial requirements rate design complaint, we believe that Seminole has raised questions of fact which require resolution on the basis of an evidentiary hearing. Accordingly, we shall deny FPL's request for dismissal of the complaint, and we shall afford Seminole an opportunity to prove, under section 206 of the Federal Power Act, that the present PR-2 rates, terms, and conditions are unjust, unreasonable, unduly discriminatory or preferential, and that Seminole's partial requirements load characteristics will be sufficiently different from those of FPL's other customers to justify development of a separate partial requirements rate.

Given our resolution of the matters in FPL's petition, we shall terminate Docket No. EL83-24-001. However, we find that common questions of law and fact may exist in Docket Nos. EL83-24-000 and ER82-793-000. Therefore, we shall consolidate those dockets. We recognize, however, that inclusion of the additional matters raised by Seminole in the proceeding pending in Docket No. ER82-793-000 could conceivably delay resolution of the cost of service issues affecting FPL's remaining customers. Thus, the presiding judge may wish to consider the appropriateness of phasing this case such that the stratified rate design issue is considered following hearing on the existing cost of service issues. In view of our decision on the contract interpretation issue, the concern for expedited treatment should be mitigated, if not eliminated.

The Commission orders

(A) The Florida Cities' untimely intervention is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) FPL's request for leave to answer Seminole's protest is hereby denied. The answer and Seminole's response are rejected.

(C) FPL's motion for summary disposition as to the notice issue is hereby granted. It is hereby declared that, pursuant to the FPL-Seminole Service Agreement dated September 1, 1982, Seminole is obligated to pay for service from FPL at the full requirements FR-1 rate level until May 20, 1984, as explained in the body of this order.

(D) FPL's request for dismissal of Seminole's complaint is hereby denied.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly Section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of FPL's partial requirements PR-2 rate design to the service sought by Seminole.

(F) Docket No. EL83-24-001 is hereby terminated.

(G) Docket Nos. EL83-24-000 and ER82-793-000 are hereby consolidated.

(H) The administrative law judge designated to preside in Docket No. ER82-793-000 shall convene a conference for purposes of determining the procedures best suited for resolution of these consolidated dockets.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26405 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-314-001]

Transcontinental Gas Pipe Line Corp.; Amendment

September 23, 1983.

Take notice that on August 12, 1983, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP83-314-001 an amendment to its application filed May 4, 1983, in Docket No. CP83-314-000 pursuant to Section 3 of the Natural Gas Act to reflect its recovery in its rates the cost of the imported gas to be purchased from Trans-Canada Pipe Lines Limited (TransCanada), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco states that the purpose of the instant amendment is to request authorization to recover in its rates the cost of the imported gas through the operation of its purchased gas adjustment (PGA) clause.

Transco states that such method of recovery of the costs of imported gas has been determined by the Commission to be appropriate in other proceedings, including the Border Gas Project (Border Gas, Inc., *et al.*, Docket No. CP80-93, *et al.*) under which Transco is currently receiving supplies of Mexican natural gas, as well as in Transco's two existing imports from Canada from Sulpetro Ltd. of Calgary (Docket No. CP81-384) and Union Gas Ltd. (Docket No. CP80-372).

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 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). 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26406 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4316-003]

Trans Mountain Construction Co. and Trans Mountain Hydro Corp.; Application for Transfer of License (Minor)

September 22, 1983.

Take notice that Trans Mountain Construction Company, Licensee for the Blue Valley Ranch Hydropower Project, and Trans Mountain Hydro Corporation, Transferee, have requested that the project license be transferred to the Transferee. The Blue Valley Ranch Hydropower Project is located on the Blue River in Grand County, Colorado. The license for Project No. 4316 was issued on July 6, 1983. The project, with a proposed installed capacity of 130 kW, is currently not in operation.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 Fed. Reg. 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before October 31, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

"PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-26434 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-646-000]

Union Electric Co.; Order Accepting for Filing and Suspending Rates, Denying in Part and Granting in Part Summary Disposition, Granting Intervention, and Establishing Hearing and Price Squeeze Procedures

September 23, 1983.

On July 29, 1983, Union Electric Company (UE) tendered for filing proposed changes in rates for wholesale service to 14 customers.[1] Based on the calendar year 1983 test period, UE's filing would increase jurisdictional revenues by approximately $17,837,000 (12%). In addition, UE proposes to change the determinants of its fuel adjustment factor from a historical basis to a forecasted basis. The company requests a September 27, 1983 effective date.

Notice of UE's filing was published in the Federal Register,[2] with comments due on or before August 22, 1983. A timely motion to intervene was filed by the W-3 Defense Group (WDG), consisting of the Cities of Farmington, Fredericktown, Hannibal, Kirkwood, and Rolla, Missouri, Citizens Electric Corporation, and West Point, Iowa.

WDG requests that the Commission suspend UE's proposed increase for five months. In support of its request, WDG raises several specific cost of service issues including: rate of return; calculation of unfunded income tax liability; development of a cash working capital allowance; and demand credits provided to two UE subsidiaries. WDG also states a variety of named, but unexplained, objections to elements of UE's filings. In addition, WDG requests summary disposition with respect to three issues; Annualization of wage increases; inclusion of cash bank balances (in addition to a cash working capital allowance) in rate base; and the use of a short-term debt interest rate (10%) below the current prime rate (11%).

Finally, WDG alleges that UE's proposed rates for service to WDG are discriminatory vis-a-vis UE's other wholesale rates as well as the company's retail rates. Accordingly, WDG requests that the issues of rate discrimination and price squeeze be set for hearing.

On September 7, 1983, UE filed an answer to WDG's pleading. The Company contends that summary disposition as to the three issues raised by WDG is inappropriate and that no more than a one day suspension of the proposed increase is warranted. In addition, UE denies that its proposed rates for service to WDG are unduly discriminatory or create a price squeeze. The Company also disputes most of the other cost of service issues identified by WDG.[3]

On September 9, 1983, the Missouri Public Sevice Commission filed a late motion to intervene. The Missouri Commission states that it has engaged in disputes with UE in the past over the allocation of the Company's plant for retail purposes and intends to present testimony on that issue in this proceeding. According to the Missouri Commission, its presentation of testimony will serve the public interest because this may promote consistent allocations for wholesale and retail rates. The Missouri Commission states that it was unable to file a timely intervention because of an unusually heavy caseload currently pending before it.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motion to intervene serves to make WDG a party to this proceeding. Given the early stage of this proceeding, the potential interest of the Missouri Commission, and the fact that no undue delay or prejudice should occur as a result of the alte intervention, we find that good cause exists to permit the Missouri Commission to intervene out of time.

We shall deny WDG's motion for summary disposition with respect to the issue of wage annualization. In support of its motion, WDG alleges that UE has annualized its wage increases so that the test period reflects wages paid at year-end levels, and that this was rejected by the Commission in the Company's last rate case, *Union Electric Co.*, Docket No. ER 81-450-000, 16 FERC ¶ 61,008 (1982). In so alleging, WDG mischaracterizes both what UE has done in the instant filing and the Commission's holding in the prior case. In that case, we rejected the Company's annualization of a *post*-test period wage increase as contrary to the Commission's filing requirements. 16 FERC at 61,013. In the instant case, UE has annualized the effects of a wage increase occurring halfway through the 1983 test period. Accordingly, WDG's reliance on our holding in the prior *Union Electric Co.* proceeding is misplaced.

As noted, UE has included cash balances in addition to an allowance for cash working capital in rate base. In its last rate case, the Company calculated cash working capital using the modified 45-day rule formulated in *Carolina Power & Light Co.*, Opinion No. 19-A, 6 FERC ¶ 61,154 (1979), and included cash balances in rate base as well. However, as indicated by the initial decision in that case, UE conceded that no provision for cash balances would be necessary so long as cash working capital is calculated according to the modified 45-day rule. 21 FERC ¶ 63,080, p. 65,234 (1983). In the instant case, UE has again calculated cash working capital using the modified 45-day formula; the company has provided no explanation, however, as to how, if at all, the instant case differs from Docket No. ER81-450-000 in this respect or why an additional allowance is supportable. Indeed, UE concedes in its September 7 answer that cash balances are unnecessary in the event that the modified 45-day formula is used as proposed in UE's filing. Accordingly, we shall grant WDG's motion for summary disposition as to this issue. In addition, we shall require UE to file, within thirty (30) days of the date of this order, revised rates and cost support reflecting the exclusion of cash balances from rate base.

With respect to the third issue for which WDG seeks summary disposition, we believe that the appropriate short-term debt interest rate to use in the company's cost of service is a matter which raises questions of law or fact most appropriately resolved on the basis of an evidentiary hearing. We shall

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[1] *See* Attachment A for rate schedule designations and affected customers.

[2] 48 FR 36327 (Aug. 10, 1983).

[3] UE acknowledged, however, that it had erred in the calculation of unfunded income tax liability and stated that it would voluntarily correct the error by filing revised tariff sheets. On September 12, 1983, the company submitted the revised tariff sheets and moved to amend its filing by substituting the exhibits attached to its motion in lieu of the corresponding exhibits originally included in UE's filing. Given the late date at which UE filed its motion, we have not had an opportunity to review the company's submittal in detail. We note, however, that the amended filing would reduce UE's proposed revenues by about $2.7 million.

therefore deny the motion for summary disposition on this point.

Based upon our preliminary review, we find that UE's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, as modified, and we shall suspend the rates as ordered below.

The Commission explained its suspension policy in *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982). As noted there, where our preliminary review suggests that increased rates may be unjust and unreasonable and may yield substantially excessive revenues, as defined in *West Texas*, we will ordinarily impose a five month suspension. In the instance case, our preliminary review indicates that UE's rates, as modified by summary disposition and the company's voluntary concession (footnote 3, *supra*), may produce substantially excessive revenues. Given the reduction in the level of the revenues to be collected subject to refund as a result of UE's September 12 amended filing and the availability of refund protection, we do not believe that the affected customers will be prejudiced by granting the company's request to collect the lower proposed rates in lieu of the rates originally filed. Accordingly, we shall grant UE's motion to substitute the revised tariff sheets and exhibits and we shall suspend the reduced rates, as further modified by summary disposition, for five months from sixty days after filing, to become effective on February 27, 1984, subject to refund.

In accordance with the policy and practice articulated in *Arkansas Power & Light Co.*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by WDG.

The Commission orders:

(A) The Missouri Commission's motion to intervene in this proceeding is hereby granted subject to this Commission's Rules of Practice and Procedure.

(B) WDG's motion for summary disposition with respect to the inclusion of cash balances is hereby granted. WDG's motion is denied as to the issues of annualization of wage increases and the short-term debt interest rate.

(C) Within thirty (30) days of the date of this order, UE shall file revised rates and cost support reflecting the exclusion of cash balances from rate base.

(D) UE's motion to amend its filing by substituting revised tariff sheets and exhibits reflecting a reduced rate increase is hereby granted.

(E) UE's substitute rates, as modified by Paragraph (B) above, are hereby accepted for filing and suspended for five months from sixty days after filing, to become effective on February 27, 1984, subject to refund.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of UE's rates.

(G) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Commission hereby orders the initiation of price squeeze proceedings and further order that this docket be phased so that the price squeeze proceedings begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may order a departure from this schedule for good cause shown. The price squeeze phase of this proceeding shall be governed by § 2.17 of the Commission's regulations as it may be modified prior to the commencement of the price squeeze phase.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

UNION ELECTRIC COMPANY: RATE SCHEDULE DESIGNATIONS (DOCKET NO. ER83-646-000)

[Filed: July 29, 1983]

Designation	Other party
(1) Fourth Revised Sheet Nos. 4, 5 and 6 under FPC Electric Tariff Volume No. 2 (Supersede third Revised Sheet Nos. 4, 5 and 6).	W-3 Customers.
(2) First Revised Sheet No. 7 under FPC Electric Tariff Volume No. 2 (Supersedes Original Sheet No. 7.	Do.
(3) Supplement No. 11 to Supplement No. 20 to Rate Schedule FPC No. 49 (Supersedes Supplement No. 10 to Supplement No. 20).	Missouri Power and Light Co.
(4) Supplement No. 10 to Rate Schedule FPC No. 68 (Supersedes Supplement No. 8).	Missouri Utilities Co.
(5) Supplement No. 3 to Rate Schedule FERC No. 103 (Supersedes Supplement No. 1).	Do.
(6) Supplement No. 3 to Rate Schedule FERC No. 104 (Supersedes Supplement No. 1).	Missouri Edison Co.
(7) Supplement No. 3 to Rate Schedule FERC No. 105 (Supersedes Supplement No. 1).	Missouri Power & Light Co.

[FR Doc. 83-26407 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-655-000, EL83-5-001 and EL83-25-000]

Wisconsin Public Power Inc. SYSTEM and Wisconsin Public Service Corp.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Rehearing, Consolidating Dockets and Incorporating Record, Ordering Summary Disposition in Part, and Establishing Hearing and Price Squeeze Procedures

September 22, 1983.

Three proceedings involving the Wisconsin Public Service Corporation (WPS) are currently pending before the Commission: a proposed wholesale rate increase in Docket No. ER83-655-000; a request for rehearing of an order setting a complaint for hearing in Docket No. EL83-5-001; and a second complaint filed by the same customers in Docket No. EL83-25-000. For the reasons stated below, we shall order summary disposition, consolidate these proceedings, set them for hearing, and incorporate the record developed to date in Docket No. EL83-5-000.

Rate filing (Docket No. ER83-655-000)

On August 1, 1983, WPS tendered for filing a proposed two-step increase in its firm and interruptible rates to 10

wholesale customers. [1] The proposed Phase A rates would increase revenues by approximately $2.0 million (3.8 percent), based on a calendar year 1984 test period. The proposed Phase B rates would increase revenues by an additional $1.9 million, representing a total increase of $3.9 million (7.62 percent). WPS requests effective dates of October 1, 1983, and October 2, 1983, for the Phase A and B rates, respectively.

Notice of the filing was published in the **Federal Register**, with comments due on or before August 23, 1983. A timely notice of intervention, which raises no substantive issues, was filed by the Public Service Commission of Wisconsin (Wisconsin Commission). Timely motions to intervene were filed by Consolidated Water Power Company (Consolidated) and the Algoma Group. [2]

Consolidated requests that this proceeding be set for hearing, citing several tariff and costs of service issues.[3] The Algoma Group requests that both steps of WPS' proposed increase be suspended for five months, on the basis of various cost of service adjustments,[4] and that an investigation and hearing be instituted, based on several other rate designed issues and contract provisions.[5] In addition, the Algoma Group requests that the rate filing be made subject to final decisions in Docket Nos. EL83–5–000 and EL83–25–000 and alleges price squeeze.[6]

Rehearing (Docket No. EL83–5–001)

On July 25, 1983, WPS filed a request for rehearing of a Commission order, issued in Docket No. EL83–5–000 on June 24, 1983, which set for hearing a complaint relating to interruptible power service, filed by Wisconsin Public Power Inc. SYSTEM (WPPI).[7] 23 FERC ¶ 61,425. WPS asserts that WPPI's complaint was precluded by the terms of a settlement agreement between the parties in Docket No. ER82–67–000.[8]

The Docket No. ER82–67–000 settlement agreement conditionally barred further litigation while the settlement rates are in effect. Article 2.1 of the agreement provides:

> This Settlement Agreement resolves all issues, claims, demands, liabilities and causes of action, . . ., as between the Company and the Customers's based upon or arising out of the Company's filings in this proceeding, including this filing, except as provided in Article 2.2 hereof.

Article 2.2 reserved issues involving the level of interruptible rates and the cost of service treatment of interruptible rate transactions for a hearing.

In its complaint, WPPI alleged that WPS had refused to provide interruptible service to WPPI, although WPPI qualifies for and has requested such service under the interruptible power sales provisions of its rate schedule. Specifically, the complaint challenged WPS' application of article 7(g) of the interruptible clause which limits total contracted interruptible load to 10% of WPS system peak demand. WPPI contended that WPS has implemented this clause in a discriminatory and anticompetitive manner, to the benefit of its retail customers.

The Commission determined, in the June 24, 1983 order, that WPPI's complaint was not barred by the settlement agreement in Docket No. ER82–67–000, drawing a distinction between the reasonableness of the rate schedule terms (on which further litigation was precluded by the settlement) and the application of those terms (concerning which further litigation was not precluded). Since WPPI's allegations were found to relate to the application of the interruptible power provisions in WPS' rate schedule (specifically, to the company's marketing of interruptible power to eligible customers), the complaint was allowed to proceed to hearing.

On rehearing, WPS argues that nothing in the settlement agreement distinguishes the reasonableness from the application of the rate schedule terms and conditions and that, therefore, WPPI's complaint is barred so long as the settlement rates are effective. The request for rehearing was granted solely for purposes of further consideration by Commission order of August 23, 1983.

Complaint (Docket No. EL83–25–000)

On June 9, 1983 WPPI[9] filed a second complaint against WPS, alleging that WPS has violated section 205 of the Federal Power Act by refusing to permit WPPI to engage in peak shaving, pursuant to the terms of WPS' effective W–1 rate schedule (covering service to WPPI) and the October 16, 1981 contract for service between WPS and WPPI. WPPI contends that WPS' actions in this regard are part of a series of practices designed to preserve WPS' monopoly position in the bulk power resale and the retail markets within its service area.

In its complaint, WPPI states that it desires to peak shave by use of off-system purchases, including a purchase from another WPPI member, the City of Kaukauna. WPS has rejected the proposal, averring that the current tariff does not contemplate peak shaving by use of non-firm service from off-system facilities. WPPI further alleges that WPS would permit the use of off-system purchases for peak shaving only if WPPI converted to partial requirements service, which would require five years prior written notice under the current contract. WPPI asserts that WPS has no reasonable planning justification for treating peak shaving provided from off-system sales differently from that provided through installation of on-site

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[1] See Attachment A for rate schedule designations and affected customers.

[2] The Algoma Group includes the Cities and Villages of Stratford, Wisconsin Rapids, Manitowoc, and Marshfield, Wisconsin; the City of Stephenson, Michigan; the Washington Island Electric Cooperative; and the Wisconsin Public Power Incorporated SYSTEM.

[3] These issues included possible discriminatin among customer classes; the derivation of WPS proposed unbundled generation and transmission demand charges; a possible rate tilt; and the availability of interruptible power.

[4] The Algoma Group's cost of service adjustments include reduction of the rate of return on equity; an increase in the amortization period for lost site costs; elimination of interest on prior years' income taxes payable; correction of the functionalization of general and common plant; correction in the development of transmission demand and energy loss factors; elimination of wholesale allocation of regulatory factors; elimination of wholesale allocation of regulatory commission expenses assessed by the Wisconsin Commission; an increase of revenue credits for pool sales; and corrections for overstatements of current year deferred taxes, prior year spent nuclear fuel disposal costs, fuel inventory, cash working capital allowance, and gross peak demands.

[5] Other issues specifically raised by the Algoma Group relate to the proposed unbundled transmission and generation demand rates; the conjunctive billing calculations and estimates underlying the W–1T rates; the proposed fuel adjustment clause revision from lagging to current billing; the development of customer demand charges, discounts, minimum charges, the W–1 late payment fee, and nuclear fuel storage costs and decommissioning cost estimates; and the terms and conditions of the interruptible rates which may be discriminatory in comparison with rates for similar services to WPS' retail customers.

[6] The Algoma Group also seeks to preserve its ability, under article 3.4 of an earlier settlement agreement in Docket No. ER82–67–000, to reassert certain reserved issues related to interruptible service at any time up to the submission of intervenor testimony in this proceeding. An initial decision addressing those issues is currently pending before the Commission on exceptions. 22 FERC ¶ 63,088 (1983).

[7] WPPI is a municipal electric company authorized to purchase power and energy at wholesale for resale to its 29 Wisconsin municipal members. WPPI is joined in its complaint by the Cities of Algoma, Eagle River, New Holstein, Sturgeon Bay, and Two Rivers, Wisconsin, all of which are served through WPPI by WPS.

[8] In Docket No. ER82–67–000, WPS proposed increases in its rate for various wholesale services, including interruptible power service. A partial settlement of the rate case, referred to in note 6 *supra*, was approved by letter order dated September 30, 1982.

[9] In this docket, WPPI is again joined by the Cities of Algoma, Eagle River, New Holstein, Sturgeon Bay, and Two Rivers, Wisconsin.

facilities and that the five year notice provision is unreasonable and anticompetitive. WPPI requests that the Commission order WPS immediately to enter into a peak shaving agreement with WPPI and to strike the five year notice provision.[10]

Notice of WPPI's complaint was published in the **Federal Register**, with comments due on or before July 7, 1983. The Wisconsin Commission filed an untimely notice of intervention on July 20, 1983.

On July 28, 1983, WPS filed an answer and motion to dismiss the complaint.[11] WPS asserts that the W-1 schedle, which is incorporated by reference in the service agreement, permits only on-site peak shaving where the peak shaving facility is installed on the customer's own premises. Therefore, WPPI's peak shaving proposal is inconsistent with and prohibited by the rate schedule. As justification for its construction, WPS states that, as a full requirements rate schedule, the W-1 schedule was framed to encompass relatively small increments of load reduction through customer's on-site peaking installations, which could be incorporated in WPS' generation and transmission planning. In contrast, peak shaving through off-system purchases can result in large shifts in system load, which cannot be considered for planning purposes, since the deliveries would be made on a non-firm basis. WPS maintains that WPPI's proposal could only be effectuated under different terms and conditions, including a partial requirements rate format in which WPPI would nominate firm demands.

In an attempt to clarify the notice provisions of its tariff, WPS states that WPPI's proposed off-system purchases are subject to a five year notice of conversion provision to the extent that such purchases involve more than 25% of the Cities' loads, but are subject to a two year notice provision if they involve 25% or less of the Cities' loads. WPS asserts that the notice provisions are reasonable and in line with notice provisions recently approved by the Commission in *Kentucky Utilities Company*, Opinion No. 169, 23 FERC ¶ 61,317 (1983).

On August 11, 1983, WPPI filed a response to WPS' motion for dismissal, requesting that the motion be denied because the allegations in the complaint involve questions of fact not appropriately subject to summary disposition. On August 26, 1983, WPS filed an answer to a "new" issue raised in WPPI's response.[12] WPS argues that the question of whether the W-1 full requirements rate should be modified to apply to the partial requirements service proposed by WPPI is not ripe for hearing.

On July 5, 1983, WPPI filed a motion to consolidate this complaint docket with Docket No. EL83-5-000, already set for hearing. WPS filed an answer opposing consolidation on July 29, 1983,[13] in which it states that the two complaint dockets involve different issues, different time frames, and different sets of facts.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed notice and motions to intervene serve to make the Wisconsin Commission, Consolidated, and the Algoma Group parties in Docket No. ER83-655-000. The Commission also finds that good cause exists to grant the late intervention of the Wisconsin Commission in Docket No. EL83-25-000, given its apparent interest and the fact that this proceeding is still in its early stages.

Our preliminary review of WPS' submittal and the pleadings in Docket No. ER83-655-000 indicates that the proposed Phase A and Phase B rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept WPS rates for filing and we shall suspend the rates as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our examination of WPS' proposed rates suggests that the Phase A rates may not yield excessive revenues, while the Phase B rates may result in substantially excessive revenues. Accordingly, we shall suspend the Phase A rates for one day from the proposed effective date, to become effective on October 2, 1983, subject to refund. We shall suspend the proposed Phase B rates for five months to become effective on March 2, 1982, subject to refund.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Algoma Group.

WPS request for rehearing in Docket No. EL83-5-001 will be denied. As noted above, the Commission interpreted the litigation moratorium language of the Docket No. ER82-67-000 settlement agreement in the June 24, 1983 order. WPS has raised no new facts or points of law on rehearing that would persuade us to revisit the question. Moreover, as acknowledged by WPS in its request, WPPI is clearly not barred from instituting an action relating to the company's interruptible power service once the superseding rates in Docket No. ER83-655-000 become effective.[14] Even if we were now to agree with WPS that the settlement precluded WPPI's original complaint, we would allow the proceeding already set for hearing to continue, rather than terminating that proceeding and instituting another, in the interest of administrative efficiency and economy. The only question which might remain concerns the scope of WPPI's potential remedies in the event that it prevails in this proceeding. Resolution of that question at this time appears to be premature.

WPPI's complaint in Docket No. EL83-25-000 will be set for hearing. We shall, however, dismiss that portion of WPPI's complaint which requests that the Commission order WPS to enter immediately into a peak shaving agreement with WPPI. Although WPPI asserts that WPS' tariff permits WPPI to peak shave through off-system purchases, relying on the fact that the rate schedule language does not specifically prohibit such peak shaving, our review of the rate schedule and contract [15] indicates that the peak shaving terms and conditions are designed to apply specifically to facilities installed by the purchaser on its own system. In this regard, we do not believe that the failure to enumerate all power supply options that were intended to be prohibited under the tariff supports the conclusion that WPS must now provide service other than that specified.

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[10] WPPI's original complaint also alleged that WPS had failed to file a conjunctive billing rate as required by the Docket No. ER82-67-000 settlement agreement. On August 11, 1983, WPPI withdrew that portion of its complaint, in light of WPS' August 1, 1983 rate filing, which included a proposed totalized billing rate.

[11] Pursuant to the notice separately served on WPS, this answer was not untimely.

[12] WPPI's motion to strike this answer, filed on September 7, 1983, is hereby denied.

[13] In a notice issued July 11, 1983, the Commission granted an extension of time for filing this answer to July 29, 1983.

[14] We note that the August 1, 1983 rate filing includes the same interruptible power provision as was contained in the prior rate schedule.

[15] The pertinent tariff language is quoted in Attachment B.

At the same time, we note that the rates, terms, and conditions of WPS' full requirements service to WPPI are at issue in Docket No. ER83-655-000.[16] We shall therefore include as an issue in that proceeding the reasonableness of restricting availability of full requirements peak shaving to customers that install their own generation.

With regard to WPPI's request to strike the notice of conversion provisions contained in the WPS' tariff, we note that the reasonableness of such provisions may rest heavily on the circumstances of the particular seller and purchaser and on the nature of the services provided. We are not persuaded that summary disposition is warranted. Therefore, we shall set the question of the propriety of WPS' notice provisions for hearing.

Inasmuch as all of the issues remaining for hearing related to WPS' tariff and to each other to varying extents, and because resolution of these issues might be facilitated by consideration in the context of WPS' full rate proceeding, we shall consolidate Docket Nos. EL83-5-000 and EL83-25-000 with Docket No. ER83-655-000 for purposes of hearing and decision. The presiding judge may consider the appropriateness of a phasing procedure given the complex nature of the consolidated proceeding.

The Commission orders:

(A) The untimely intervention of the Wisconsin Commission in Docket No. EL83-25-000 is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) WPS' proposed rates in Docket No. ER83-655-000 are hereby accepted for filing; the Phase A rates are suspended for one day, to become effective on October 2, 1983, subject to refund, and the Phase B rates are suspended until March 2, 1984, subject to refund.

(C) WPS' request for rehearing in Docket No. EL83-5-001 is hereby denied and Docket No. EL83-5-001 is terminated.

(D) WPPI's request in Docket No. EL83-25-000 that the Commission order WPS immediately to enter into a peak shaving agreement with WPPI is hereby dismissed. WPPI's request that the Commission strike WPS's five year notice of conversion provision is hereby denied and the issue is set for hearing, as noted in the body of this order. WPS' motion for dismissal of WPPI's complaint in Docket No. EL83-25-000 is hereby denied, except with respect to WPPI's request that WPS be ordered to enter into a peak-shaving agreement under its current tariff.

(E) Docket Nos. EL83-5-000 and EL83-25-000 are hereby consolidated with Docket No. ER83-655-000 for purposes of hearing and decision.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of WPS' rates and the remaining matters raised in WPPI's complaints.

(G) The record developed in Docket No. EL83-5-000 thus far shall be incorporated by reference in the consolidated proceeding.

(H) The Commission staff shall serve top sheets in this proceeding on or before October 11, 1983.

(I) The administrative law judge designated to preside in Docket No. EL83-5-000 shall convene a conference in this proceeding to determine the procedures best suited for resolution of this consolidated proceeding.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

WISCONSIN PUBLIC SERVICE CORPORATION: DOCKET NO. ER83-655-000—RATE SCHEDULE DESIGNATIONS

Designation	Description	Other party
(1) Supplement No. 16 to Rate Schedule FPC No. 25 (Supersedes Supplement No. 15).	Tier A: W-1 Rates	Village of Daggett.
(2) Supplement No. 16 to Rate Schedule FPC No. 27 (Supersedes Supplement No. 15).	do	City of Stephenson.
(3) Supplement No. 9 to Rate Schedule FPC No. 36 (Supersedes Supplemant No. 8).	do	Alger Delta Electric Association.
(4) Supplement No. 7 to Rate Schedule FERC No. 38 (Supersedes Supplement No. 6).	do	City of Wisconsin Rapids.
(5) Supplement No. 6 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 5).	do	Village of Stratford.
(6) Supplement No. 6 to Rate Schedule FERC No. 40 (Supersedes Supplement No. 5).	do	Washington Island Elec. Cooperative.
(7) FERC Electric Tariff Original Volume No. 2: 1st Revised Sheet Nos. 4, 5, 6, 9, 11, 13, 14 and 15 (Supersedes Original Sheet Nos. 4, 5, 6, 9, 11, 13, 14 and 15).	Tier A: W-1T Rates	Wisconsin Public Power Inc. SYSTEM.
4th Revised Sheet Nos. 7 and 8 (Supersedes 3rd Revised Sheet Nos. 7 and 8).	do	
3rd Revised Sheet No. 9 (Supersedes 2nd Revised Sheet No. 9).	do	
2nd Revised Sheet No. 12 (Supersedes 1st Revised Sheet No. 12).	do	
Original Sheet Nos. 16-20	do	
(8) 7th Revision to FERC Electric Tariff, Original Volume No. 1 (Supersedes 6th Revision).	Tier A: W-2 Rates	Tariff customers [1].
(9) Supplement No. 17 to Rate Schedule FPC No. 25 (Supsedes Supplement No. 16).	Tier B: W-1 Rates	Village of Daggett.
(10) Supplement No. 17 to Rate Schedule FPC No. 27 (Supersedes Supplement No. 16).	do	City of Stephenson.
(11) Supplement No. 10 to Rate Schedule FPC No. 36 (Supersedes Supplement No. 9).	do	Alger Delta Electric Association.
(12) Supplement No. 8 to Rate Schedule FERC No. 38 (Supersedes Supplement No. 7).	do	City of Wisconsin Rapids.
(13) Supplement No. 7 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 6).	do	Village of Stratford.
(14) Supplement No. 7 to Rate Schedule FERC No. 40 (Supersedes Supplement No. 6).	do	Washington Island Elec. Cooperative.
(15) FERC Electric Tariff Original Volume No. 2: 5th Revised Sheet Nos. 5 and 7 (Supersedes 4th Revised Sheet Nos. 5 and 7).	Tier B: W-1T Rates	Wisconsin Public Power Supply Inc. SYSTEM.
(16) 8th Revision of FERC Electric Tariff, Original Volume No. 1 (Supersedes 7th Revision).	Tier B: W-2 Rates	Tariff customers[1].

[1] Present W-2 tariff customers are the cities of Manitowac and Marshfield.

[16] The August 1, 1983 rate filing includes the same peak shaving and notice provisions as those contained in the prior rate schedule.

Attachment B

Section 8 of the W–1 schedule provides:

8. *Customer Peaking Facilities:* Customers desiring to install peaking facilities for the purpose of shaving their peak demands shall be required to sign new individual customer contracts. All such contracts shall include provisions for the following:

a. Peaking facilities shall be operated only during Period A specified in this Schedule W–1 under the caption: "MONTHLY RATE. 2. DEMAND CHARGE. b. System Demand. 1) Winter and 2) Summer. a) Period A."

b. Peaking facilities shall be operated in a manner which will not adversely affect the company's system, and appropriate protective devices shall be installed to prevent the flow of any energy from the customer's system into the company's system.

c. Scheduled maintenance of the peaking facilities shall be coordinated with the company's maintenance schedule.

d. Contracts shall have a minimum term of 5 years with a 3-year cancellation notice.

e. The customer shall be responsible for all applicable charges and classes of the W–1 rate schedule.

[FR Doc. 83–26425 Filed 9–27–83; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP83–464–001]

Zenith Natural Gas Co.; Amedment

September 23, 1983.

Take notice that on August 31, 1983,[1] Zenith Natural Gas Company (Applicant), 601 South Boulder Avenue, Tulsa, Oklahoma 74119, filed in Docket No. CP83–464–001 an amendment to its pending application filed in Docket No. CP83–464–000 to request pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations a blanket certificate of public convenience and necessity, in lieu of budget-type authorization, authorizing the construction, acquisition, operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–26408 Filed 9–27–83; 8:45 am]

BILLING CODE 6717–01–M

[1] The amendment was initally tendered for filing on August 31, 1983, however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 19, 1983; thus, filing was not completed until the later date.

[Docket No. QF83–175–002]

James A. Drake, Miller's Plant Farm Foliage and Chrysanthemum Division of Dustin, Oklahoma; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 23, 1983.

On May 5, 1983, James A Drake, et. al., Route #2, Box 82–J, Seminole, Oklahoma 74868, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is under construction in Hughes County, Oklahoma at the same site as another cogeneration unit, filed in docket number QF83–275–001. It will consist of a 700 kilowatt spark ignition engines from which heat will be recovered for use in air and soil temperature controlled growing houses. The primary energy source to the facility will be natural gas.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such petitions must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to he taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public insepction.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–26421 Filed 9–27–83; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–343; PH–FRL 2440–2]

Pesticide, Feed, and Food Additive Petitions; BASF Wyandotte Corp.; et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments identified by the document control number [PF–343], should be submitted by mail to: Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, deliver comments to: Product Manager (PM) 21, CM#2 Rm. 227, Environmental Protection Agency, 1921 Jefferson Davis Highway, CM#2, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. All written comments filed in response to the notice will be available for public inspection in the PM's office from 8:00 a.m. to 4:00 p., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM–21, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide, feed, and food additive petitions relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

I. Initial Filings

1. *PP 3F2934.* BASF Wyandotte corp., 100 Cherry Hill Rd., Parsippany, NJ 07054. Proposes amending 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide 3-(3, 5-dichlorophenyl)-5-ethenyl-5-

methyl-2, 4-oxazolikdinedione and its metabolites containing the 3, 5-dichloraniline moiety each expressed as the fungicide in or on the commodities lettuce (leaf) and raspberries at 10.0 parts per million (ppm) and onions (green and dry bulbs) at 1.0 ppm. The proposed analytical method for determining residue is gas chromatography using electron capture detector. (Ni63)

2. *PP 3F2938.* Mobay Chemical Corp., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes amending 40 CFR 180.410 by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3-dimethyl-1-(1*H*-1,2,4-trizol-1-yl)-2-butanone and its metabolite beta-(4.chlorophenoxy)-alpha-(1, 1-dimethylethyl)-1*H*-1, 2, 4-triazole-1-ethanol in or on the commodities coffee beans at 0.05 ppm, cottonseed at 0.20 ppm, and sugarcane at 0.10 ppm. The proposed analytical method for determining residues is gas liquid chromatography.

3. *FAP 3H5409.* Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the fungicide thiabendazol (2-(4-thazolyl)benzimidazole in or on the commodity wheat milling fractions, except flour, at 3.0 ppm.

II. **Amended Petition**

PP 3F2827. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. EPA issued a notice published in the Federal Register of March 16, 1983 (48 FR 11156) which announced that Ciba-Geigy Corp. had submitted pesticide petition 3F2827 proposing to amend 40 CFR 180.408 by establishing tolerances for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2, 6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the commodities brassica (cole) leafy vegetables, fruiting vegetables (curcubits), fruiting vegetables (except curcubits), leafy vegetables (except brassica), leaves of root and tuber vegetables, and sunflower at 0.1 ppm. Ciba-Geigy amended the petition by (1) deleting the proposed tolerances on fruiting vegetables (curcubits) leaves and roots of tuber vegetables, and root and tuber vegetables and (2) adding fruiting vegetables group (except cucurbits and tomatoes); beets, beets tops, and sunflower forage at 0.1 ppm. The proposed analytical method for determining residues is radioactive counting and gas chromatography.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2)); (Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: September 14, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-26131 Filed 9-27-83; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2856/T430; PH-FRL 2440-3]

Pesticides; Establishment of Temporary Tolerances; Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the fungicide iprodione, its isomer and its metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by Rhone-Poulenc, Inc.

DATE: These temporary tolerances expire December 31, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1900).

SUPPLEMENTARY INFORMATION: Rhode-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, has requested, in pesticide petition PP 3G2856, the establishment of temporary tolerances for the combined residues of the fungicide iprodione, 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodities succulent beans (excluding cowpeas) at 2.0 parts per million (ppm), and dry beans (excluding cowpeas) at 2.0 ppm as a result of preharvest applications.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 359-EUP-65 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The Scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the conditions that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhode-Poulenc, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: September 14, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-26130 Filed 9-27-83; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL 2441-8]

Fuel Economy Retrofit Devices; Announcement of Fuel Economy Retrofit Device Evaluation for Optimizer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the EPA evaluation of the "Optimizer" device under provisions of Section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and Section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 (44 FR 17946).

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

On December 10, 1982, the EPA received a request from Optimizer, Ltd. for evaluation of the Optimizer as a fuel saving device. The basic device is a combustion catalyst consisting of an electric fuel heater containing a bed of platinum deposited on an inert substrate. The remainder of the system includes a heater relay, a condenser to cool the fuel to operating temperature, and the associated plumbing. According to the applicant, the device introduces a very small amount of platinum into the fuel. This enhances the combustion process and allows ignition timing to be advanced. The device, coupled with the ignition timing adjustments, is claimed to improve fuel economy, increase performance, and reduce engine maintenance while keeping emissions low.

Report: "EPA Evaluation of the Optimizer Device Under Section 511 of the Motor Vehicle Information and Cost Savings Act". Report Number EPA-AA-TEB-511-83-9 contains the analysis and conclusions and consists of 80 pages including all attachments.

III. Availability of Evaluation Reports

Copies of this report may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650.

IV. Summary of Evaluation

EPA fully considered all of the information submitted by the device manufacturer in the Application. The evaluation of the Optimizer device was based on that information and our engineering judgment.

The overall conclusion is that, for most vehicles, the device and the prescribed ignition timing adjustments of the engine will cause a small improvement in fuel economy and a large increase in NO_x emissions. These changes are attributed to be due principally to the five degree advance in ignition timing rather than the device itself.

Despite improvements in fuel economy, other devices evaluated by EPA that have increased exhaust emissions have been considered tampering by the EPA's Field Operations and Support Division.

Addendum

After the completion of the evaluation, the applicant informed EPA that the device which was evaluated would not be marketed. He stated that the device had undergone considerable changes and that they intended to submit a new application on this new model that they expected to market. However, since no application has been submitted, EPA is unable to judge if the new device has any emission or fuel economy benefits.

This additional correspondence between the applicant and the government has been added to the report to complete the package of information on the device.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4299.

Dated: September 17, 1983.

Joseph A. Cannon,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-26379 Filed 9-27-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100006; PH-FRL 2441-6]

Research Triangle Institute; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Research Triangle Institute, under Contract No. 68-01-6646. Some of the information has been claimed to be confidential business information (CBI). The contractor has met all the requirements of 40 CFR 2.301(h)(2) and consequently the data will be transferred for performance of the contract. The action will enable Research Triangle Institute to fulfill the obligations of the contract and serves to notify affected persons.

DATE: Research Triangle Institute will be given access to these documents no sooner than October 3, 1983.

FOR FURTHER INFORMATION CONTACT: Address mail to: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA; (703-557-2613).

SUPPLEMENTARY INFORMATION: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 10(e) provides that confidential business information (CBI), or business information which is alleged to be confidential, may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA section 7. Contractors are

authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in §2.307. Such determinations have been made concerning contract 68–01–6646 with Research Triangle Institute.

The contractor requires access to compilations of total domestic distribution of formulated end-use products. These data are compiled from individual pesticide establishment reports. The contractor will review the data to plan future surveys, eliminate unnecessary requests for information, and evaluate the accuracy of past survey results.

The contractor has been cleared in accordance with the procedures in the EPA FIFRA Confidential Business Information Security Manual to have access to confidential business information. FIFRA subsection 10(f)(1) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The Research Triangle Institute contract with EPA specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and Research Triangle Institute personnel will be required to sign a non-disclosure agreement before they are permitted access to such information.

Dated: September 10, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-26380 Filed 9-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 5200–44.

Title: Pacific Coast European Conference.

Parties: Blue Star Line, Ltd.; Compagnie Generale Maritime; D' Amico Societa de Navigazione Per Azioni; The East Asiatic Co., Ltd.; Hapag-Lloyd AG; Intercontinental Transport (ICT) B. V.; Italian Line; Johnson Line AB; Scan-Pacific Line; United Yugoslav Line; and Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendments would further amend the independent action clause by deleting the requirement that such action be restricted to meeting lower rates, etc. of a non-conference carrier.

Filing Party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Third Floor, San Francisco, California 94111.

Dated: September 23, 1983.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-26367 Filed 9-27-83; 8:45 am]

BILLING CODE 6730-01-M

Thailand/U.S. Atlantic & Gulf Conference; Cancellation

Filing Party: Coopers & Lybrand Associates Co. Ltd., 8th Floor, Thai Danu Bank Bldg., 393 Silom Road, P.O. Box 788, Bangkok.

Agreement No. 8100.

Summary: The Thailand/U.S. Atlantic & Gulf Conference stands terminated as of May 15, 1983, the date its last two members Barber-Blue Sea Lines and A. P. Moller-Maersk Line resigned from the Conference Agreement.

Dated: September 23, 1983.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-26366 Filed 9-27-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; SouthTrust Corp., et al.

The companies listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the 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, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to acquire at least 80 percent of the voting shares or assets of The Leeth National Bank, Cullman, Alabama. Comments on this application must be received not later than October 21, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Landmark Financial Group, Inc.,* Fort Worth, Texas; to acquire 100 percent of the voting shares or assets of Landmark Bank of Fort Worth, Fort Worth, Texas, a proposed new bank. Comments on this application must be received not later than October 19, 1983.

Board of Governors of the Federal Reserve System, September 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26341 Filed 9-27-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies, de Novo Activities; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 83–25650), published in paragraph F.1. at page 43094 of the issue for Wednesday, September 21, 1983. *United Bancorporation Alaska, Inc:* These

activities would be performed from an office in Anchorage, Alaska, serving the State of Alaska.

Board of Governors of the Federal Reserve System, September 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26342 Filed 9-27-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Nabanco, Inc., et al.

The companies listed in this notice has 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 Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Nabanco, Inc.* Lancaster, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of The National Bank of Lancaster, Lancaster, Kentucky. Comments on this application must be received not later than October 21, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Collier Bank Corporation,* Naples, Florida; to become a bank holding company by acquiring at least 80 percent of the voting shares of Collier Bank, Naples, Florida. Comments on this application must be received not later than October 21, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bancorp of Springfield, Inc.,* Springfield, Kentucky; to become a bank holding company by acquiring at least 100 percent of the voting shares of First and Peoples Bank, Springfield, Kentucky. Comments on this application must be received not later than October 21, 1983.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brookwood Bancshares, Inc.,* Oklahoma City, Oklahoma; to become a bank holding company by acquiring 95 percent of the voting shares of Brookwood National Bank, Oklahoma City, Oklahoma. Comments on this application must be received not later than October 21, 1983.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Texas Holding Company,* Winnsboro, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Winnsboro Bank and Trust, Winnsboro, Texas. Comments on this application must be received not later than October 21, 1983.

2. *Med Center Bancshares, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Medical Center Bank, Houston, Texas. Comments on this application must be received not later than October 21, 1983.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ubanco, Inc.,* Tacoma, Washington; to become a bank holding company by acquiring all of the voting shares of The Union Bank, Tacoma, Washington. Comments on this application must be received not later than October 21, 1983.

Board of Governors of the Federal Reserve System, September 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26340 Filed 9-27-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Northeastern Bancorp, Inc., et al.

The organizations identified in this notice have applied, pursuant to section 4.(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 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 these applications, 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 that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing 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 Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Northeast bancorp, Inc.,* Scranton, Pennsylvania (secondary mortage and consumer financing; eastern Pennsylvania): To engage, through its subsidiary, Regency Consumer Discount Company, Inc., in consumer and secondary mortage finance activities, including the extension of direct loans to consumers, the discount of retail and installment notes or contracts, the purchase of recreational lot notes and working capital purposes. These activities would be conducted from an office in Scranton, Pennsylvania, primarily serving eastern Pennsylvania. Comments on this application must be received not later than October 21, 1983.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp,* Pittsburgh, Pennsylvania (lending and servicing activities; Maryland and the District of Columbia): To engage, through its wholly-owned subsidiary, The Kissell Company, in making or acquiring and servicing for its own account and/or the account of others, loans and other extensions of credit. These activities will be conducted at an office located in Greenbelt, Maryland serving Anne Arundel and Price Georges Counties, Maryland and northeast Washington, D.C. Comments on this application must

be received not later than October 21, 1983.

2. *PNC Financial Corp.* Pittsburgh, Pennsylvania (lending and servicing activities; Indiana, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia): To engage, through its wholly-owned subsidiary, The Kissell Company, in making and acquiring and servicing for its own account and/or the account of others, loans and other extensions of credit. These activities will be conducted at an office located in Gaithersburg, Maryland, serving the states of Indiana, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. Comments on this application must be received not later than October 21, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancorporation,* Sheboygan, Wisconsin (management consulting and data processing activities; Wisconsin, upper peninsula of Michigan): To engage through its subsidiary, Citizens Management Services Corporation in providing management consulting advice to nonaffiliated banks and nonbank depository institutions; and providing data processing and data transmission services, data bases or facilities for the internal operations of the holding company or its subsidiaries, and for others. These activities would be conducted in Wisconsin and the upper peninsula of Michigan, from an office to be located in Milwaukee, Wisconsin. Comments on this application must be received not later than October 12, 1983.

2. *Citizens Bancorporation,* Sheboygan, Wisconsin, (lending activities; Wisconsin, upper peninsula of Michigan): To engage, through its subsidiary, Citizens Mortgage Company, Inc., in making and acquiring loans and other extensions of credit, for its own account or for the account of others. These activities would be conducted in Wisconsin and the upper peninsula of Michigan, from an office to be located in Milwaukee, Wisconsin. Comments on this application must be received not later than October 12, 1983.

Board of Governors of the Federal Reserve System, September 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26343 Filed 9-27-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Laboratories, Inc.; Sulfapyridine and Sulfathiazole Solution; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Veterinary Laboratories, Inc., providing for use of Sul-Thi-Dine Solution, an injectable solution containing sulfapyridine sodium and sulfathiazole sodium for animal use. The firm requested withdrawal of approval.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-443-4093.

SUPPLEMENTARY INFORMATION: Veterinary Laboratories, Inc. 12340 Sante Fe Drive, Lenexa, KS 66215, is the sponsor of NADA 7-468 which provides for use of Sul-Thi-Dine Solution, (sulfapyridine sodium 6.0 percent weight to volume (w/v) and sulfathiazole sodium 6.0 percent (w/v) for use in the treatment of farm animals with acute infections due to bacteria susceptible to the active ingredients. The sponsor, by letter dated June 14, 1983, requested that the approved NADA be withdrawn because the product has not been marketed for several years.

In § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), FDA provides for voluntary withdrawal of an NADA at the written request of the sponsor if the product is not being marketed. Approval of this application has not been codified in the Code of Federal Regulations.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115, notice is given that approval of NADA 7-468 and all supplements thereto is hereby withdrawn, effective October 11, 1983.

Dated: September 21, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-26346 Filed 9-27-83; 8:45 am]

BILLING CODE 4160-01-M

Health Professional Organization Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting with health professional organizations to be chaired by Mark Novitch, Acting Commissioner of Food and Drugs.

DATE: The meeting will be held from 2 p.m. to 4 p.m., Thursday, October 6, 1983.

ADDRESS: The meeting will be held in Rm. 503-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth Flieger, Special Assistant to the Associate Commissioner for Health Affairs (HFY-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6143.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs meets periodically with representatives of national health professional organizations to discuss mutual concerns and facilitate dissemination of FDA proposals and decisions affecting health care and professional practice. Agenda items for discussion at the October 6, 1983 meeting include the agency's sodium initiative, direct-to-the-consumer advertising of prescription drugs, and FDA's efforts to communicate time-sensitive information to the health professions.

Dated: September 26, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-26469 Filed 9-26-83; 10:23 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-83-1287]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has 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 proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. 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, S.W., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal 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 Officers 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 proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grants/Special Projects Program.

Office: Community Planning and Development.

Form Number: SF–424, Narrative.

Frequency of Submission: Annually.

Affected Public: State or Local Governments.

Estimated Burden Hours: 400.

Status: New.

Contact: Yvette Aidara, HUD, (202) 755–8909, 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: July 29, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration.

[FR Doc. 83-26344 Filed 9-27-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-0102703]

Colorado; Proposed Continuation; Amendment to Notice of Proposed Withdrawal, Fryingpan-Arkansas Project

September 21, 1983.

In accordance with the provisions of Section 204 of the Federal Land Policy and Management Act, the Bureau of Reclamation has filed a statement of justification for the partial continuation of the existing withdrawal of lands for the Gunnison-Arkansas Project by Secretarial Orders of May 24, and June 3, 1946, which are presently associated with the Fryingpan-Arkansas Project, and the lands which were withdrawn by public land order 3500, dated December 8, 1964, as amended, for the Fryingpan-Arkansas Project. The proposed continuation would affect the following described public and forest lands:

1. Public Land:

Sixth Principal Meridian

T. 9 S., R. 80 W.,
Sec. 8, S½NE¼, and SE¼;
Sec. 17, N½NE¼, SE¼Ne¼, and N½SE¼;
Sec. 18, lot 18;
Sec. 20, N½SE¼NE¼, SW¼SE¼NE¼, and NW¼SW¼.
T. 11 S., R. 80 W.,
Sec. 9, S½S½;
Sec. 15, lot 3;
Sec. 16, S½;
Sec. 23, S½N½SE¼, and S½SE¼;
Sec. 27, N½NE¼, N½S½NE¼, SE¼SE¼NE¼, NE¼NW¼, and N½NW¼NW¼.

The areas described aggregate approximately 1,363 acres of public land.

2. San Isabel National Forest:

Sixth Principal Meridian

T. 9 S., R. 80 W.,
Sec. 7, lots 3, 7, and N½SE¼;
Sec. 8, S½NW¼, and N½SW¼.
T. 9 S., R. 81 W.,
Sec. 10, N½SE¼, and SW¼SE¼;
Sec. 11, lot 1, N½SW¼, N½N½SE¼SW¼, and NW¼SE¼;
Sec. 12, lots 3 thru 7 (N½S½);
Sec. 14, S½N½NW¼, those portions of lot 1 (SE¼NE¼), the S½NW¼, and the SW¼NE¼ which are north of the south boundary of County Road 4;
Sec. 15, N½NE¼.
T. 10 S., R. 80 W.,
Strips of land being 60 feet in width extending to and limited by the property lines 30 feet each side of the Mt. Elbert Conduit centerline measured at right angles to the centerline which centerline is more particularly described in the following sections:
Sec. 20, in the S½N½.
Beginning at P.O.T. Station 346+49.92 a point on the North line of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼), of Section Twenty (20), which point bears S18°27'W a distance of 1,383.5 feet from the North Quarter corner of Section Twenty (20) and proceeding,
Thence on a tangent S28°06' E a distance of 425.85 feet to P.C. Station 350+75.77;
Thence on a curve to the right with a radius of 1500.00 feet for 471.37 feet to P.T. Station 355+47.14;
Thence on a tangent S10°06'E a distance of 516.06 feet to P.O.T. Station 360+63.20 a point on the North line of the South Half (S½) of Section Twenty (20), containing 1.95 acres more or less, and
Sec. 29, in the N½NE¼,.
Beginning at P.O.T. Station 387+91.77 a point on the North line of the North Half (N½) of the Northeast Quarter (NE¼) of Section Twenty-Nine (29), which point bears S89°44'E a distance of 660.3 feet from the North Quarter corner of Section Twenty-Nine (29) and proceeding,
Thence on a tangent S23°41'E a distance of 1441.87 feet to P.O.T. Station 402+33.64 a point on the South line of the North Half (N½) of the Northeast Quarter (NE¼) of Section Twenty-Nine (29), containing 1.99 acres more or less.
Sec. 29, in the SE¼, and
Sec. 32 in the NE¼ and SE¼NW¼,
Beginning at P.O.T. Station 416+18.16 a point on the North line of the Southeast Quarter (SE¼), of Section Twenty-Nine (29), which point bears S31°15'E a distance of 3,096.5 feet from the North Quarter corner of Section Twenty-Nine (29) and proceeding,
Thence on a tangent S07°57'E a distance of 303.59 feet to P.C. Station 419+21.75;
Thence on a curve to the right with a radius of 850.00 feet for 228.28 feet to P.T. Station 421+50.03;
Thence on a tangent S07°26'W a distance of 2,061.71 feet to P.C. Station 442+11.74;
Thence on a curve to the right with a radius of 1100.00 feet for 482.58 feet to P.T. Station 446+94.32;
Thence on a tangent S32°34'W a distance of 2,648.08 feet to P.O.T. Station 473+42.40 a point on the South line of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section

Thirty-Two (32), containing 7.88 acres more or less.

All bearings stated above are grid bearings from Colorado State Plane Coordinates.

T. 11 S., R. 80 W.,
Sec. 17, N½N½;
Sec. 18, NE¼NE¼;
Sec. 30, lot 5 (SW¼NE¼).
T. 9 S., R. 81 W.; T. 8 S., R. 82 W.; T. 9 S., R. 82 W.; T. 9 S., R. 83 W.; T. 10 S., R. 83 W.; T. 10 S., R. 84 W.; all sixth principal meridian, more accurately described below:

North Side Collection System Including Carter Tunnel, Mormon Tunnel, Cunningham Tunnel, Nast Tunnel, Fryingpan Conduit and Appurtenant Structures

A parcel of land located in Pitkin and Eagle Counties, Colorado, in the White River National Forest described as follows:

A strip of land measured at right angles to a surveyed line, said strip being 225 feet in width 125 feet right and 100 feet left of centerline from Station −0+80 to Station 0+45; thence 200 feet in width, 100 feet each side of centerline from Station 0+45 to Station 62+50; thence 280 feet in width, 100 feet right and 180 feet left from Station 62+50 to Station 64+30; thence 200 feet in width, 100 feet each side of centerline from Station 64+30 to Station 66+80; thence 580 feet in width, 100 feet right and 480 feet left from Station 66+80 to Station 69+40; thence 200 feet in width, 100 feet each side of centerline from Station 69+40 to Station 140+60; thence 450 feet in width, 100 feet right and 350 feet left from Station 140+60 to Station 143+00; thence 200 feet in width, 100 feet each side of centerline from Station 143+00 to Station 182+40; thence 430 feet in width, 100 feet right and 330 feet left from Station 182+40 to Station 184+50; thence 200 feet in width, 100 feet each side of centerline from Station 184+50 to Station 333+40; thence 380 feet in width, 100 feet right and 280 feet left from Station 333+40 to Station 335+65; thence 200 feet in width, 100 feet each side of centerline from Station 335+65 to Station 520+37.22, which surveyed line is more particularly described as follows:

Beginning at Carter feeder conduit P.O.T. Station −0+80 which bears N66°25'30"E, a distance of 47,282.68 feet from the Southwest corner of Section Seven (7), T8S., R.83W., 6th P.M. and proceeding,

Thence S38°30'00"E, a distance of 125.00 feet to P.I. Station 0+45;
Thence S73°30'00"E, a distance of 117.00 feet to P.I. Station 1+62;
Thence S33°30'00"E, a distance of 120.04 feet to P.I. Station 2+82.04;
Thence S53°00'00"E, a distance of 71.41 feet to P.I. Station 3+53.45;
Thence S06°00'00"E, a distance of 12.02 feet to P.I. Station 3+65.47 Carter feeder conduit = 21+43.50 Carter Tunnel;
Thence S53°00'00"E, a distance of 431.25 feet to P.I. Equation Station 25+74.75 BK = 26+00.00 AH;
Thence S40°52'51"E, a distance of 2,384.83 feet to P.I. Station 49+84.83;
Thence S16°12'13"E, a distance of 97.53 feet to P.I. Station 50+82.36;
Thence S41°02'08"E, a distance of 463.72 feet to P.I. Station 55+46.08;
Thence S22°46'23"E, a distance of 351.32 feet to P.I. Station 58+97.40;
Thence S20°00'13"W, a distance of 1,088.1 feet to Equation Station 69+85.50 BK = 69+70.86 AH;
Thence S20°00'13"W, a distance of 7,543.2 feet to P.I. Station 145+14.06;
Thence S70°47'48"W, a distance of 708.11 feet to P.I. Station 152+22.17;
Thence S41°57'08"W, a distance of 332.70 feet to P.I. Station 155+54.87;
Thence S67°47'16"W, a distance of 120.95 feet to P.I. Station 156+75.82;
Thence S88°51'56"W, a distance of 341.37 feet to P.I. Station 160+17.19;
Thence S25°42'48"W, a distance of 342.41 feet to P.I. Station 163+59.60;
Thence S13°16'38"W, a distance of 276.33 feet to P.I. Station 166+35.93;
Thence S60°36'56"W, a distance of 352.41 feet to P.I. Station 169+88.34;
Thence SS33°52'03"W, a distance of 475.95 feet to P.I. Station 174+64.29;
Thence S08°16'48"W, a distance of 207.34 feet to Equation Station 176+71.63 BK = 176+53.82 AH;
Thence S08°16'48"W, a distance of 15,944.81 feet to P.I. Station 355+98.43;
Thence S20°43'57"E, a distance of 279.47 feet to P.I. Equation Station 338+77.90 BK = 338+10.00 AH;
Thence S15°59'57"E, a distance of 97.63 feet to Equation Station 339+07.63 BK = 339+08.00 AH;
Thence S15°59'57"E, a distance of 44.58 feet to Equation Station 339+52.58 BK = 339+51.25 AH;
Thence S15°59'57"E, a distance of 32.00 feet to A.P. Station 339+83.25;
Thence S16°05'20"E, a distance of 5,859.97 feet to Station P.I. 8;
Thence S14°57'45"E, a distance of 266.49 feet to Station PC No. 4;
Thence S20°48'28"E, a distance of 235.17 feet to Station P.O.C. No. 4 U/S;
Thence S31°24'35"E, a distance of 146.33 feet to Station P.O.C. No. 4 D/S;
Thence S41°08'48"E, a distance of 243.31 feet to P.T. No. 4 Equation Station 406+91.62 BK = 407+07.44 AH;
Thence S47°13'48"E, a distance of 675.84 feet to P.I. 7C Station 413+83.08;
Thence S47°11'59"E, a distance of 60.76 feet to Equation Station 414+43.84 BK = 414.50.00 AH;
Thence S47°11'59"E., a distance of 411.61 feet to P.I. 6C Station 418+61.61;
Thence S47°14'08"E, a distance of 525.35 feet to P.I. 5C Station 423+86.96;
Thence S47°13'07"E, a distance of 995.04 feet to P.I. 4C Station 433+82.00;
Thence S47°12'05"E, a distance of 398.00 feet to P.I. 3C Station 437+80;
Thence S47°13'46"E, a distance of 1,385.00 feet to P.I. 2C Station 451+65;
Thence S47°17'56"E, a distance of 50.00 feet to P.I. 1C Station 456+65;
Thence S47°13'48"E, a distance of 1,163.05 feet to Station P.I. No. 3;
Thence S46°46'03"E, a distance of 503.68 feet to Station P.I. No. 2;
Thence S53°13'27"E, a distance of 1,130.30 feet to Station PC No. 1;
Thence S46°30'08"E, a distance of 196.54 feet to Station F;
Thence S32°17'23"E, a distance of 145.34 feet to Station E;
Thence S21°26'11"E, a distance of 110.61 feet to Station D;
Thence S10°38'30"E, a distance of 129.99 feet to Station C;
Thence S0°24'18"W, a distance of 136.39 feet to Station B;
Thence S10°59'35"W, a distance of 134.74 feet to Station A;
Thence S19°32'46"W, a distance of 110.69 feet to Equation Station 493+55.82 BK = 494+53.70 AH;
Thence S19°32'46"W, a distance of 86.36 feet to B.C. Station 495+40.06;
Thence S21°41'44"W, a distance of 318.10 feet to P.I. Station 498+58.16;
Thence S02°08'29"W, a distance of 200.84 feet to P.I. Station 500+58.00;
Thence S18°14'06"E, a distance of 997.60 feet to P.I. Station 510+58.60;
Thence S10°23'09"W, a distance of 980.62 feet to P.C. 520+37.22 on the Fryingpan Conduit, containing 237.54 acres, more or less.

South Side Collection System and Boustead Tunnel Including Hunter Tunnel, Chapman Tunnel, South Fork Tunnel and Appurtenant Structures

A parcel of land located in Pitkin and Lake County, Colorado, in the White River and Pike-San Isabel National Forests described as follows:

A strip of land measured at right angles to a surveyed line, said strip being 200 feet in width, 100 feet each side of centerline from Station −1+30 to Station 97+50; thence 300 feet in width, 200 feet right and 100 feet left from Station 97+50 to Station 100+00; thence 200 feet in width, 100 feet each side of centerline from Station 100+00 to Station 160+50; thence 270 feet in width, 170 feet right and 100 feet left from Station 160+50 to Station 160+95; thence 200 feet in width, 100 feet each side of centerline from Station 160+95 to Station 401+46.19; thence 300 feet in width, 100 feet right and 200 feet left from Station 401+46.19 to Station 2+32; thence 200 feet in width, 100 feet each side of centerline from Station 2+32 to station 162+00; thence 350 feet in width, 100 feet right and 250 feet left from Station 162+00 to Station 164+00; thence 700 feet in width, 600 feet right and 100 feet left from Station 164+00 to Station 166+50; thence 200 feet in width, 100 feet each side of centerline from Station 166+50 to Station 331+00; thence 500 feet in width, 400 feet right and 100 feet left from Station 331+00 to Station 337+45; thence 200 feet in width, 100 feet each side of centerline from Station 337+45 to Station 627+19, which surveyed line is more particularly described as follows:

Beginning at Hunter Tunnel P.O.T. Station −1+30 which bears S02°52'55"W, a distance of 64,843.0 feet from the Southwest corner of Section Seven (7), T.8S., R.83W, 6th P.M., and Proceeding,

Thence S73°05'06"E, a distance of 230 feet to P.I. Station 1+00;
Thence N74°41'08"E, a distance of 9,735.84 feet to P.I. Station 98+35.84;
Thence N15°39'52"E, a distance of 6,075.17 feet to P.I. Station 159+11.01;

Thence N36°20'44"L, a distance of 163.09 feet to Equation Station 160+74.10 BK=159+51.11 AH;
Thence N36°20'44"E, a distance of 24,195.08 feet to P.I. Station 401+46.19;
Thence N06°20'44"L, a distance of 174.35 feet to P.I. Station 403+20.54;
Thence 17°43'24"W, a distance of 387.24 feet to P.I. Station 0+01.73;
Thence N37°50'00"E, a distance of 247.86 feet to P.I. Station 2+49.59 Chapman Feeder=10+29.86 Chapman Tunnel;
Thence N90°00'00"E, a distance of 2,209.53 feet to P.I. Station 32+39.39;
Thence S39°40'00"E, a distance of 11,906.38 feet to P.I. Station 151+45.77;
Thence N83°04'00"E, a distance of 18,634.99 feet to P.I. Station 337+80.76;
Thence N66°39'00"E, a distance of 28,938.24 feet to P.O.T. Station 627+19 of the Boustead Tunnel outlet structure, containing 483.10 acres, more or less.

Granite Creek Diversion, Siphon and Granite Adit on the North Side Collection System

A parcel of land located in Pitkin County, Colorado, in the White River National Forest described as follows:

A strip of land measured at right angles to a surveyed line, said strip being 125 feet in width, 50 feet right and 75 feet left of centerline from Station #1+65 to Station −0+90; thence 100 feet in width 50 feet each side of centerline from Station −0+90 to Station 23+50; thence 320 feet in width, 50 feet on the right and 270 feet on the left from Station 23+50 to Station 24+10; thence 100 feet in width, 50 feet each side of centerline from Station 24+10 to Station 43+54.00, which surveyed line is more particularly described as follows:

Beginning at Granite siphon P.O.T. Station 1+65 which bears S47°57'27"E, a distance of 55,559.20 feet from the Southwest corner of Section Seven (7), T.8S., R.83W., 6th P.M. and proceeding,
Thence N02°32'13"E, a distance of 78.50 feet to A.P. Station −0+86.50;
Thence N15°32'13"E, a distance of 556.50 feet to A.P. Station 4+70.00;
Thence N51°35'35"E, a distance of 2,089.28 feet to Equation Station 25+59.28 BK=25+61.80 AH;
Thence N51°35'35"E, a distance of 1,097.20 feet to A.P. Station 36+59.00;
Thence N51°36'21"E, a distance of 695.00 feet to P.I. Station 43+54.00 on the Granite Adit, containing 10.72 acres, more or less.

Sawyer Creek Diversion and Conduit on the South Side Collection System

A parcel of land located in Pitkin County, Colorado, in the White River National Forest described as follows:

A strip of land measured at right angles to a surveyed line, said strip being 110 feet in width, 50 feet right and 60 feet left of centerline from Station 8+00 to Station 8+70; thence 100 feet in width, 50 feet each side of centerline from Station 8+70 to Station 35+50; thence 175 feet in width, 50 feet right and 125 feet left from Station 35+50 to Station 37+70, which surveyed line is more particularly described as follows:

Beginning at Sawyer Creek conduit P.O.T. Station 8+00 which bears S29°45'03"E, a distance of 40,280.44 feet from the Southwest corner of Section Seven (7), T.8S., R.83W., 6th P.M., and proceeding,
Thence N53°54'15"E, a distance of 165.16 feet to P.I. Station 9+65.16;
Thence S71°17'12"E, a distance of 361.38 feet to P.I. Station 13+26.54;
Thence S58°07'46"E, a distance of 278.88 feet to P.I. Station 16+05.42;
Thence S39°20'11"E, a distance of 405.61 feet to P.I. Station 20+11.03;
Thence S34°14'38"E, a distance of 337.31 feet to P.I. Station 23+48.34;
Thence S38°01'18"E, a distance of 370.53 feet to P.I. Station 27+18.87;
Thence S43°13'56"E, a distance of 278.21 feet to P.I. Station 29+97.08;
Thence S53°41'45"E, a distance of 327.89 feet to P.I. Station 33+24.97;
Thence S76°35'01"E, a distance of 314.53 feet to P.I. Station 36+39.50;
Thence N69°24'59"E, a distance of 130.50 feet to P.O.T. Station 37+70 on the Sawyer Creek conduit, containing 7.21 acres, more or less.

South Cunningham Creek Diversion and Conduit on the North Side Collection System

A parcel of land located in Pitkin County, Colorado, in the White River National Forest described as follows:

A strip of land measured at right angles to a surveyed line, said strip being 100 feet in width, 50 feet each side of centerline from Station 99+60 to Station 138+92.14, which surveyed line is more particularly described as follows:

Beginning at South Cunningham Creek diversion and conduit P.O.T. Station 99+60 which bears S71°5126E, a distance of 44,940.79 feet from the Southwest corner of Section Seven (7), T.8S., R.83W., 6th P.M., and proceeding,
Thence N54°08'09"E, a distance of 149.36 feet to P.I. Station 101+09.36;
Thence N46°24'01"E, a distance of 440.98 feet to P.I. Station 105+50.34;
Thence S71°23'01"E, a distance of 1,488.25 feet to P.I. Station 120+38.59;
Thence S66°51'23"E, a distance of 276.96 feet to P.I. Station 123+15.55;
Thence S68°57'11"E, a distance of 1,116.29 feet to P.I. Station 134+31.84;
Thence S76°45'36"E, a distance of 196.21 feet to P.I. Station 136+28.05;
Thence N68°56'46"E, a distance of 87.13 feet to P.I. Station 137+15.18;
Thence N22°33'28"E, a distance of 176.96 feet to P.O.T. Station 138+92.14 on the South Cunningham Creek conduit, containing 9.03 acres, more or less.

Bearings shown are grid bearings from Colorado State Plane Coordinates. The areas described aggregate approximately 2,555 acres of national forest land.

The Bureau of Reclamation proposes that these lands continue to be withdrawn for a period of 50 years, the projected life of this project. This withdrawal is required for the protection of investments in constructed facilities and for project uses. These withdrawals closed the public lands in paragraph 1 to all forms of appropriation under the public land laws, including the U.S. mining laws; they closed the forest lands in paragraph 2 to such forms of appropriation as may by law be made of national forest lands, including operation of the U.S. mining laws. The lands in paragraphs 1 and 2 remain open to mineral leasing. This continuation will not change the segregative effect or use of the lands.

The Bureau of Reclamation has made application for the withdrawal of additional lands for the Fryingpan-Arkansas Project. The original application erroneously omitted small, isolated, parcels of land. Therefore, the Notice of Proposed Withdrawl and Reservation of Lands appearing in the **Federal Register** Vol. 36, No. 195, page 19518, on October 7, 1971, is hereby amended to include the following described public and forest lands:

3. Public land:

Sixth Principal Meridian

T. 9 S., R. 80 W., Sec. 18, those portions of the NE¼SW¼ exclusive of patent No. 4756 and Mineral Survey No. 17437.

The described parcels consist of approximately 12 acres of public land.

4. Forest land:

Sixth Principal Meridian

San Isabel National Forest

T. 9 S., R. 81 W.,
Sec. 10, SE¼SE¼ exclusive of Homestead Entry Survey 340;
Sec. 11, N½SW¼SW¼ exclusive of Homestead Entry Survey 340 and Mineral Survey No. 19231;
Sec. 14, Those parcels in the N½N½NW¼ exclusive of Homestead Entry 340.

The areas described aggregate approximately 29 acres of national forest land.

Effective on the date of publication of this notice, the public lands in paragraph 3 are withdrawn from operation of all the public land laws, including the U.S. mining laws, subject to valid existing rights. The forest land in paragraph 4 is withdrawn from such forms of appropriation as may by law be made of national forest lands, including the U.S. mining laws, subject to valid existing rights. Both public and forest lands remain open to mineral leasing. This segregation shall continue for a period of two years unless terminated sooner by administrative action and publication in the **Federal Register**. Administrative jurisdiction over this land will not be affected by this temporary segregation.

Pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for public hearing is afforded in connection with the

proposed withdrawal and the proposed continuation. Any persons who desire to be heard on these proposed actions must submit a written request for a hearing to the State Director, at the address shown below, within 90 days of the date of publication. If a hearing is scheduled, notice of the hearing will be published in the Federal Register giving time and place of such hearing. The hearing would be scheduled and conducted in accordance with BLM Manual, Section 2351.16B.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare the necessary reports for consideration by the Office of the Secretary of the Interior. The final determinations on these actions will be published in the Federal Register. The existing withdrawals will continue until such determination is made, the lands in the amended notice will continue for two years from date of publication unless further administrative action is taken and notice is published.

All communications in connection with these proposed actions should be addressed to the State Director, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-26388 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579 (FLPMA), that a meeting of the Susanville District Grazing Advisory Board will be held on October 18 and 19, 1983. It will include a tour of portions of the Alturas Resource Area.

The meeting will begin at 10:00 a.m. at the Cal Pines west of Alturas.

The agenda will include prescribed burning, fire management, use of electric fence, FY 84 range improvement projects, survey and design of FY 85 projects, water rights, Cooperative Management Agreements, Helicopter gathering of wild free roaming horses FY 1984 and other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:30 p.m. and 4:30 p.m. on October 19, 1983, or file a written statement for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California 96130, by October 12, 1983. Depending upon the number of persons wishing to make oral statements, a per person list limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 20, 1983.

C. Rex Cleary,

District Manager.

[FR Doc. 83-26333 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

[I-19719]

Idaho Falls District; Notice of Realty Action, Modified Competitive Sale of Public Lands in Custer County, Idaho

Summary: The following described land has been examined, and through the development of land use decisions which included public input, it has been determined that the sale of the parcel is consistent with Section 203(a)1 of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale at public auction for no less than the appraised fair market value and any bids for less than such value will be rejected as required by FLPMA. Both sealed and oral bids will be accepted.

T. 6 N., R. 24 E.,

Boise Meridian, Idaho

Sec. 3, W½W½W½SE¼.

The above aggregates 20 acres.

The land is being sold at public auction subject to a preference bidding designaton to allow William F. Seefried to meet the highest bid based on historical use and adjacent land ownership. Refusal or failure to meet the highest bid within 30 days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the high bidder. If no bid is received on the date of this offering, preference provision will be waived and the land will be offered for sale at the Idaho Falls District Office on Tuesday, January 10, 1984 at 10:00 a.m. If no bids are received at that time, the sale will be cancelled.

The lands will be subject to the following reservations when patented:

1. Ditches and Canals;
2. All Minerals, including Oil and Gas;
3. All Existing Rights and Reservations of Record.

As a condition of the sale, the successful bidder agrees that he/she takes the real estate subject to the existing grazing use in the Alder Creek Grazing Allotment. The permittees in the allotment, their authorization numbers, and dates of expiration are listed below:

Name	Grazing authorization No.	Expiration date
Randy and Peggy Pehrson	3000	Sept. 8, 1985.
Lin F. Hintze	335	Feb. 28, 1989.
James C. Lambert	3052	Feb. 28, 1989.
Nolan Sayer	3072	Feb. 28, 1989.
Don E. Palmer	3070	Feb. 28, 1990.
M. Marx Hintze	3074	Feb. 28, 1990.
Marlin D. Anderson	3005	Feb. 28, 1990.

The privileges of these individuals to graze domestic livestock on the real estate according to the conditions and terms of the above grazing authorization shall cease on the above expiration dates. The successful bidder is entitled to receive annual grazing fees from the above listed individuals in an amount not to exceed that which would be authorized under the Federal grazing fees published annually in the Federal Register.

Date: The public auction will be held on Tuesday, December 6, 1983, at 2:00 p.m.

Address: The public auction will be held at the Butte County Memorial Building, 326 W. Grand Avenue, Arco, Idaho 83213.

Supplementary Information: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Sectin 203(g) of FLMPA or other applicable laws.

This tract is identified by the Government Land Office Cadastral Survey of June 7, 1890.

For further information concerning terms and conditions of the sale and bidding instructions, contract Brent D. Jensen, Big Butte Resource Area Manager, Bureau of Land Management 940 Lincoln Road, Idaho Falls, Idaho 83401 or by calling (208) 529–1020.

Dated: September 20, 1983.

O'dell A. Frandsen,

District Manager.

[FR Doc. 83-26335 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

[I-19721]

Idaho Falls District; Notice of Realty Action, Competitive Sale of Public Lands in Butte and Custer Counties, Idaho

Summary: The following described land has been examined, and through the development of land use decisions which included public input, it has been determined that the sale of these parcels is consistent with Section 203(a)1 of the Fedeal Land Policy and Management Act of 1976 (FLPMA). The lands will be offered for sale at public auction for no less than the apprasied fair market value and any bids for less than such value will be rejected as required by FLPMA. Both sealed and oral bids will be accepted.

Boise Meridian

Parcel A

T. 4 N., R. 24 E.,
Sec. 17, E½NE¼.
80 Acres.

Parcel B

T. 4 N., R. 24 E.,
Sec. 17, NE¼SE¼.
40 Acres.

Parcel C

T. 4 N., R. 24 E.,
Sec. 20, SW¼NE¼.
40 Acres.

Parcel A

T. 4 N., R. 24 E.,
Sec. 7, SW¼SE¼.
40 Acres.

The above aggregates 200 acres.

Patent for all parcels, when issued, will contain the following reservations to the United States:

1. A right-of-way is reserved for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals, including oil and gas, with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of Interior may prescribe.

3. All existing rights and reservations of record.

In addition, the following parcels will be patented subject to these restrictions and conditions:

Restrictions

Parcel A

1. Pursuant to the authority contained in Section 3d of E.O. 11988 of May 24, 1977 and the Federal Land Policy and Management Act of 1976, Section 203(a), this patent is subject to a restriction which constitutes a covenant runnig with the land, that that portion of the land lying within the 100 year flood plain may be used only for agricultural purposes or park and nonintensive open recreation purposes, but not for dwelling or buildings.

Conditions

Parcel A and C

The successful bidder agrees that he/she takes the real estate subject to the existing grazing use of Milton H. Reese, holder of grazing authorization No. 3055. The rights of Milton H. Reese to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 3055 shall cease on February 28, 1990. The successful bidder is entitled to receive annual grazing fees from Milton H. Reese in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

Dates and Addresses: The public auction will be held on December 6, 1983, at 2 p.m. at the Butte County Memorial Building, 326 W. Grand Ave., Arco, Idaho 83213. If no qualifying bids are received on the date of this offering, the lands will be offered for sale at the Idaho Falls District Office using competitive procedures on January 10, 1984 at 10 a.m. If no qualifying bids are received on that day, the sale will be cancelled.

Supplementary Information: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

These parcels are identified by the Government Land Office Cadastral Surveys of June 23, 1888.

For further information concerning the parcels terms and conditions of the sale, and bidding instructions, contact Brent D. Jensen, Big Butte Resource Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401 or by calling (208) 529-1020.

Dated: September 20, 1983.

O'dell A. Frandsen,

District Manager.

[FR Doc. 83-26336 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

[OR-36342]

Realty Action; Modified Competitive Sale of Public Lands in Malheur County, Oregon

The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value:

Legal description	Acreage
T.19S., R.46E., Willamette Meridian, Oregon, Sec. 17, N½SW¼, SW¼, NW¼SE¼	160

Bids are solicited for this parcel being offered for sale. The appraised value is not being published in the Notice of Realty Action. The value will be disclosed only at the conclusion of the sale and only if an acceptable bid is received, i.e., appraised value or higher.

This sale will be held on Wednesday, December 7, 1983, at 10:00 a.m., M.S.T., Vale District Conference Room, Bureau of Land Management, 100 E. Oregon, Vale, Oregon.

The sale is consistent with the bureau's planning system and has undergone public review and discussion. The sale involves land that is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency. The public interest will be served by offering these lands for sale.

This parcel will be offered for sale at public auction through modified competitive bidding with Martin J. Sayers given preference to meet the high bid. Refusal or failure by Mr. Sayers to meet the high bid immediately after the close of oral bidding shall constitute a waiver of such right.

Modified competitive bidding procedures are being used to recognize the needs of the adjoining landowner and historical use by this landowner. Preference meet the high selling bid is authorized under section 203 of the

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 43 CFR 2711.3-2(a)(2).

Federal law requires that all bidders be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered. Proof of these requirements shall accompany all sale bids.

Sealed written bids will be considered only if received by the Bureau of Land Management, 100 E. Oregon Street, P.O. Box 700, Vale, Oregon prior to 10:00 a.m., Wednesday, December 7, 1983, M.S.T. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the Bureau of Land Management for at least twenty percent (20%) of the amount bid and shall be enclosed in a sealed envelope clearly marked, "Bid for Public Land Sale OR-36342, Malheur County, Oregon, December 7, 1983." The written sealed bids will be opened and publicly declared at the beginning of the sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing.

Oral bidding will be entertained after public declaration of the apparent high sealed bidder and all oral bids must be made in increments of $50.00 or more. After oral bids are entertained, the apparent high qualifying oral bidder shall submit payment by cash, personal check, bank draft, money order or any amount necessary to bring the amount tendered with their sealed bids up to one-fifth of the amount of the oral bid, immediately following the close of the sale. The highest bid will be accepted or rejected in writing and all unsuccessful written bids will be returned no later than 30 days after the sale.

In the exercise of the preference right, whether submitted by sealed bid or oral bid, the preference right holder shall be required to submit payment as stated above immediately following the close of the sale.

The terms and conditions applicable to the sale are:

1. The apparent high bidder shall submit the remainder of the full bid price within 30 days from receipt of notice of acceptance. Failure to submit the full bid price within 30 days from receipt of notice of acceptance shall result in sale cancellation of the parcel and the deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw the tract from sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

3. A right-of-way will be reserved for a 66 KV power transmission line, Federal Power Commission (Federal Energy Regulatory Commission) Project No. 985, constructed and used by the Idaho Power Company.

4. The patents will contain a reservation to the United States for all ditches and canals.

5. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

6. The sale will be subject to all valid existing rights.

If this parcel is not sold pursuant to this Notice of Realty Action, it shall remain available for sale on a continuing basis until sold or withdrawn. Bids will be solicited on these parcels at the Vale District Office, during regular business hours (7:45 a.m. to 4:30 p.m.). Interested parties bidding on these parcels shall be informed of the appraised value only when an acceptable bid has been received, i.e., appraised value or higher.

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the District Office, Bureau of Land Management, 100 E. Oregon Street, Vale, Oregon, 97918. For a period of 45 days after the issuance of this notice, the public and interested parties may submit comments to the Vale District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 97-394, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: September 20, 1983.

Fearl M. Parker,

District Manager.

[FR Doc. 83-26350 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

[W-74546]

Wyoming; Conveyance and Order Providing for Opening of Public Land Exchange of Public Lands for Private Lands in Johnson County

September 21, 1983.

1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716 (1978), the following described land surface estate only, has been conveyed to Ellis Sheep Company, Casper, Wyoming:

Sixth Principal Meridian, Wyoming

T. 42 N., R. 85 W.,
Sec. 19, S½NE¼ and SE¼NW¼;
Sec. 20, SW¼NW¼.
Containing 160.00 acres.

The mineral estate in the above described land is, and shall continue to be, withdrawn from appropriation under the mining laws by Public Land Order 5345 dated May 31, 1973, as modified by Public Land Order 6253 dated May 25, 1982.

2. In exchange for the above land, the United States acquired the surface estate in the following described land from Ellis Sheep Company for access, outdoor recreation, and wildlife habitat purposes, to be managed with other public lands in the Bureau of Land Management's Middle Fork Recreation Area:

Sixth Principal Meridian, Wyoming

T. 42 N., R. 85 W.,
Sec. 20, E½SW¼ and W½SE¼.
Containing 160.00 acres.

3. Subject to valid existing rights and the requirements of applicable law, the land described in Paragraph 2 above, is hereby open to operation of the public land laws effective upon date of publication of this notice in the **Federal Register**. The land has been, and shall continue to be, open to operation of the mining and mineral leasing laws. All valid applications received prior to 10:00 a.m. on November 3, 1983, shall be considered as simultaneously filed at that time. Those received thereafter, shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land Resources, P.O. Box 1828, Cheyenne, Wyoming 82003.

P. D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 83-26391 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

[W-81324 C)

Wyoming; Conveyance Sale of Public Land in Laramie County, Wyoming

September 21, 1983.

Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1713 (1976), Calvin and Laurell Fogg have purchased and received a patent for the following described public land in Laramie County, Wyoming.

Sixth Principal Meridian

T. 12 N., R. 62 W.,
Sec. 2, lots 1 and 2.
Containing 4.51 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 83-26392 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Issuance of Permits for Marine Mammals; Izu-Mito Sea Paradise and Toba Aquariums

On July 29, 1983, a notice was published in the **Federal Register** (48 (147) FR 34526), that applications had been filed with the Fish and Wildlife Service by Izu-Mito Sea Paradise (PRT 2-10689) and Toba Aquarium (PRT 2-10690) for permits to authorize each aquarium to take four northern sea otters *(Enhydra lutris)* for public display.

Notice is hereby given that on September 16, 1983, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued the requested permits subject to certain permit conditions.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 North Glebe Road, Arlington, Virginia.

Dated: September 23, 1983.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 83-26418 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Caldwell Schools, Inc., et al.; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 2-11038
Caldwell Schools, Inc., Tyler, TX

The applicant requests a permit to export two captive-born male jaguars (*Panthera onca*) to the Ibarrilla Zoo, Leon, Mexico, for enhancement of propagation.

PRT 2-11085
James D. Fraser—VA Polytechnic Institute, Blacksburg, VA

The applicant requests a permit to take (band, mark, radio-tag/track, collect blood and feathers) 20 bald eagles (*Haliaeetus leucocephalus*) in the Chesapeake Bay area, for enhancement of propagation.

PRT 2-10999
International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in interstate commerce one male jaguar (*Panthera onca*) from the New York Zoological Society, NY, and one male and one female jaguar from the Knoxville Zoo, Knoxville, TN, and export them to Seoul Grand Park Zoo, Seoul, Korea for enhancement of propagation.

PRT 2-11001
International Animal Exchange, Ferndale, MI

The applicant requests a permit to import one captive-born female black rhinoceros (*Diceros bicornis*) from Granby Zoo, Quebec, Canada, and subsequently export it to Seoul Grand Zoo, Seoul, Korea, for enhancement of propagation or survival.

PRT 2-11002
International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in interstate commerce five captive-born Siamese crocodiles (*Crocodylus siamensis*) from Miami Metrozoo and export them to Seoul Grand Park Zoo, Seoul, Korea, for enhancement of propagation.

PRT 2-10879
Miami Metrozoo, Miami, FL

The applicant requests an amendment to the permit to allow import of one additional male orangutan (*Pongo pygmaeus abelii*) born to one of the female orangutans previously approved for import from Dierenpark Wassenaar Zoo, the Netherlands, for enhancement of propagation.

PRT 2-11088
National Zoological Park, Washington, DC 20008

The applicant requests a permit to import two wild-taken female Asian elephants (*Elephas maximus*) from Jabatan Hutan (Forest Department), Sabah, Malaysia, for enhancement of propagation.

PRT 2-11008
Southwick Wild Animal Farm, Inc., Blackstone, MA

The applicant requests a permit to import 30 captive-raised vicuna (*Vicugna vicugna*) from the Director, Santiago Zoo for enhancement of propagation.

PRT 2-11125
New York Zoological Society, Bronx, NY 10460

The applicant requests a permit to import one wild-caught (taken from wild in 1975) female St. Vincent parrot (*Amazona guildingii*) from the Jersey Wildlife Preservation Trust, Jersey, Channel Islands, for enhancement of propagation.

Documents and other information submitted with these aplications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to appropriate PRT 2 # when submitting comments.

Dated: September 23, 1983.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Branch, U.S. Fish and Wildlife Service.

[FR Doc. 83-26417 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Public Meeting

In accordance with Section 10(1)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council starting at 1:00 p.m., on November 7, 1983, at the Camelhead Granada Royal Hometel, 1515 North 44th Street, Phoenix, Arizona 85008.

Purpose of Meeting

Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report.

Proposed Agenda

The Department of the Interior, Department of Agriculture, and

Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

Public Participation

The meeting of the Advisory Council is open to the public.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

All communications regarding this meeting, including requests for time to make statements, should be addressed to Mr. Al R. Jonez, Chief, Colorado River Water Quality Office, Bureau of Reclamation, D–1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

Dated: September 22, 1983.

Jed D. Christensen,

Acting Commissioner of Reclamation.

[FR Doc. 83-26401 Filed 9-27-83; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-165]

Antidumping; Certain Alkaline Batteries; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 16, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-26446 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-141]

In the Matter of Antidumping; Certain Copper-Clad Stainless Steel Cookware; Commission Determination Not To Review Initial Determination Terminating Respondent; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 53) to terminate this investigation as to respondent Rose's Stores, Inc. (Rose's). Accordingly, the I.D. has become the Commission's determination as to this matter.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of August 31, 1983, 48 FR 39515. The Commission has received neither a petition for review of the I.D. nor comments from the public or other Government agencies.

As Rose's is the only remaining respondent in this investigation, the termination of Rose's terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

By order of the Commission.

Issued: September 19, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-26444 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-123 (Final)]

Antidumping; Certain Flat-Rolled Carbon Steel Products From Brazil; Institution of Final Investigation

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation.

EFFECTIVE DATE: September 7, 1983.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that certain flat-rolled carbon steel products, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated, imported from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–123 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of such merchandise.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of certain flat-rolled carbon steel products from Brazil. The preliminary investigation was instituted in response to a petition filed on January 31, 1983, by counsel on behalf of Bethlehem Steel Corp.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Hearing

The date of the Commission's hearing to be held in connection with this investigation will be announced later.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through

E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 23, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-26447 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-152]

Antidumping; Certain Plastic Food Storage Containers; Order No. 14

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Donald K. Duvall and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: September 16, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-26441 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-140, 141, 142, and 144 (Preliminary)]

Antidumping; Certain Spindle Belting From the Federal Republic of Germany, Italy, Japan, and Switzerland

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany (investigation No. 731-TA-140 (Preliminary)), Italy (investigation No. 731-TA-141 (Preliminary)), Japan (investigation No. 731-TA-142 (Preliminary)), and Switzerland (investigation No. 731-TA-144 (Preliminary)) of spindle belting,[2] provided for in items 358.14 and 358.16 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 4, 1983, a petition was filed with the Commission and the Department of Commerce by Barber Manufacturing Co. alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports from the Federal Republic of Germany, Italy, Japan, the Netherlands, and Switzerland of certain spindle belting which are being sold in the United States at LTFV. Accordingly, effective August 4, 1983, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports or such merchandise from these five countries.

On August 18, 1983, Barber Manufacturing Co. notified the Commission and Commerce that it had amended its petition to omit the allegation concerning imports from the Netherlands. Accordingly, the Commission terminated investigation No. 731-TA-143 (Preliminary), concerning certain spindle belting from the Netherlands (48 FR 40576, September 8, 1983).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on August 12, 1983 (48 FR 36677). The conference was held in Washington, D.C., on August 25, 1983, and all persons who requested the opportunity were permitted to appear in persons or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on September 19, 1983. A public version of the Commission's report, *Certain Spindle Belting from the Federal Republic of Germany, Italy, Japan, and Switzerland* (investigations Nos. 731-TA-140, 141, 142, and 144 (Preliminary), USITC Publication 1429, 1983), contains the views of the Commission and information developed during the investigations.

By Order of the Commission.

Issued: September 19, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-26443 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-120 and 122 (Final)]

Antidumping; Certain Tapered Roller Bearings and Parts Thereof From Japan and Italy

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

EFFECTIVE DATE: August 30, 1983.

SUMMARY: As a result of affirmative preliminary determinations by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that certain tapered journal roller bearings and parts thereof, provided for in item 680.39 of the Tariff Schedules of the United States imported from Japan and Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigations Nos. 731-TA-120 and 122 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded by reason of imports of such merchandise. Unless the investigations are extended, the Department of Commerce will make its final dumping determinations in the cases by November 7, 1983, and the Commission will make its final injury determinations on or before December 27, 1983 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Robert Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigations, that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of certain tapered roller

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] The subject of these investigations is belting, of man-made fibers, or of such fibers and rubber and plastic, designed for use on spindles and coated, filled, or laminated with rubber or plastics.

bearings and parts thereof from Japan and Italy. The preliminary investigations were instituted in response to a petition filed on January 26, 1983, by counsel on behalf of Brenco, Inc., Petersburg, Va.

Participation In the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff Report

A public version of the prehearing staff report continuing preliminary findings of fact in these investigations will be placed in the public record on November 10, 1983, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m., on November 30, 1983, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 21, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m., on November 23, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 25, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 7, 1983.

Written Submissions

As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 7, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All Written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 19, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-26442 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-161]

Antidumping; Certain Trolley Wheel Assemblies; Order No. 3

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Donald K. Duvall and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: September 16, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-26445 Filed 9-27-83; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act; Environmental Conservation and Chemical Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 21, 1983, a proposed consent decree in *United States* v. *Environmental Conservation and Chemical Corporation et al.*, Civil Action No. 1P 83-1419 Civil was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree concerns the cleanup of a hazardous waste dump site operated by Environmental Conservation and Chemical Corporation located ten miles northwest of Indianapolis, Indiana near Zionsville, Indiana, on U.S. Highway 421. The consent decree provides for a complete surface cleanup of the site, including the removal of all hazardous wastes and hazardous substances and their containers, all contaminated water, and a quantity of soil sufficient to insure the removal that which is contaminated.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the

Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Environmental Conservation and Chemical Corporation et al.*, D.J. Ref. 90–11–2–48.

The proposed consent decree may be examined at the Office of the United States Attorney, 274 United States Court House, 46 East Ohio Street, Indianapolis, Indiana 46204, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $40.90 payable to the Treasurer of the United States.

F. Henry Habicht, II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83–26332 Filed 9–27–83; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Processing of Complaints of Discrimination Brought Under the Job Training Partnership Act of 1982

AGENCY: Office of Civil Rights, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth interim guidance regarding the processing of complaints of discrimination in violation of the nondiscrimination provisions of the Job Training Partnership Act (JTPA) of 1982, 29 U.S.C. 1501, *et seq.*

EFFECTIVE DATE: September 28, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Morman, Chief, Division of Policy, Standards and Procedures, Office of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4603, Washington, D.C. 20210, telephone (202) 523–8905.

SUPPLEMENTARY INFORMATION: The Department of Labor is developing comprehensive civil rights regulations which, among other things, will implement the equal opportunity and nondiscrimination provisions of the Job Training Partnership Act (JTPA) of 1982, 29 U.S.C. 1501 *et seq.* These regulations are expected to replace existing Department of Labor regulations at 29 CFR Parts 31 and 32. However, until the regulations have been published as a final rule in the **Federal Register**, complaints alleging discrimination on the ground of race, color, national origin, age, sex, religion, political affiliation or belief, and, as appropriate, citizenship in violation of Section 167 of JTPA will be filed and processed under the procedures outlined in the Department of Labor's current regulations implementing Title VI of the Civil Rights Act of 1964 at 29 CFR 31.7. Under these procedures, exhaustion of recipient-level grievance procedures *is not* a prerequisite for filing a complaint with the Department of Labor's Office of Civil Rights (OCR).

Complaints alleging discrimination on the ground of handicap in violation of Section 167 of JTPA will be filed and processed under the procedures outlined in the Department of Labor's current regulations implementing Section 504 of the Rehabilitation Act of 1973 at 29 CFR 32.45. Under these procedures, complainants *must* exhaust recipient-level remedies before they can file a complaint with the OCR.

The foregoing is in accordance with the final regulations published by the Employment and Training Administration implementing JTPA which state, at 20 CFR 629.51(a), that "complaints of discrimination pursuant to Section 167(a) of the Act will be handled under 29 CFR Parts 31 and 32."

Persons seeking to bring a complaint alleging discrimination on the basis of race, color, or national origin may also file directly under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, in lieu of alleging a violation of Section 167 of JTPA; likewise, persons seeking to bring a complaint alleging discrimination on the basis of handicap may also file directly under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. The procedures for filing and processing such complaints, found at 29 CFR 31.7 and 32.45 respectively, are identical to those used for JTPA complaints.

Section 164(g) of JTPA prohibits a recipient from discharging or in any other manner discriminating against any JTPA participant or employee because such person has filed any complaint, has instituted any proceeding, or has testified, or is about to testify, regarding any alleged violation of JTPA. Complaints alleging retaliation in violation of Section 164(g) will be filed and processed under the procedures outlined in the Department of Labor's current regulations implementing Title VI of the Civil Rights Act of 1964 at 29 CFR 31.7.

Dated: September 20, 1983.

Betty Bolden,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. 83–26411 Filed 9–27–83; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Appointment of Members

Notice is hereby given that appointments have been made to fill the vacancies on the National Advisory Committee on Occupational Safety and Health (NACOSH).

New members appointed to the Committee are:

Mr. Robert B. Taylor, Public Representative (Filling the vacancy created by the resignation of Russell B. Swanson)
Mr. R. V. Durham, Labor Representative
Mr. William E. McCormick, Health Representative

Committee Members Reappointed Are:

Ms. Joyce C. Hearn, Public Representative
Dr. Bruce W. Karrh, Management Representative
Mr. B. Gawain Bonner, Safety Representative
Dr. Marcus M. Key, Health Representative

The full membership of the Committee and the categories represented are as follows:

Public

Frank R. Barnako, Chairman of the Board, National Safety Council
Joyce C. Hearn, Representative, South Carolina Legislature
Dr. Sidney Shindell, Chairman, Department of Preventive Medicine, The Medical College of Wisconsin
Robert B. Taylor, Director, Division of Occupational Safety and Health, Tennessee Department of Labor

Management

Tom Baker, President, Baker Electric Company
Dr. Bruce W. Karrh, General Director, Medical Safety and Fire Protection, E. I. du Pont de Nemours and Co., Inc.

Labor

John J. Donlon, Business Manager, Colorado Building and Construction Trades Council

R. V. Durham, Director, Safety and Health Department, International Brotherhood of Teamsters Chauffeurs, Warehouse & Helpers of America

Safety

B. Gawain Bonner, Director, Safety and Health, Tenneco, Inc.
Ronald H. Davis, Vice President, Industrial Relations, Carolina Steel Corporation

Health

Dr. Marcus H. Key, Professor of Occupational Medicine, The University of Texas
William E. McCormick, Former Managing Director, American Industrial Hygiene Assoc.

Mr. Robert Taylor, will serve the remainder of Mr. Russell B. Swanson's term which ends June 30, 1984.

The other appointments mentioned above will expire on June 30, 1985.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

For additional information contact: Clarence Page, Executive Secretary, NACOSH, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3635, Washington, D.C. 20210.

Signed at Washington this 23rd day of September, 1983.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 83-26412 Filed 9-27-83; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget Clearance

The following are those packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Annual Stock Subscription Statement (3133–0060).

Respondents: Member credit unions.

Subject: Membership Applications (3133–0063).

Respondents: Prospective credit union members.

Subject: CLF Repayment Agreement (3133–0061).

Respondents: Borrowing members.

Subject: Request for Funds (3133–0064).

Respondents: Borrowing members.

Copies of the above information collection clearances packages can be obtained by calling the National Credit Union Administration, Special Project Officer, 202–357–1080.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above, at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20403, ATTN: Judith McIntosh.

Dated: September 20, 1983.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 83-26365 Filed 9-27-83; 8:45 am]

BILLING CODE 7535-01-M

Agency Forms Submitted to Office of Management and Budget for Clearance

The following is a package submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Reports of Financial Condition—Federally insured corporate credit unions are required to make reports of conditions to the National Credit Union Administration upon dates selected by the Chairman, as authorized by Section 202(a) of the Federal Credit Union Act.

Respondents: Federally Insured Corporate Central Credit Unions.

OMB Desk Officer: Judith McIntosh.

Copies of the above information collection clearance package can be obtained by calling the National Credit Union Administration, Special Projects Officer, (202) 357–1080.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above, at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington D.C. 20403, ATTN: Judith McIntosh.

Dated: September 22, 1983.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 83-26366 Filed 9-27-83; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted to OMB for Review

In accordance with the Paperwork Reduction Act and OMB guidelines, NSF is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421.

OMB Officer: Andrew Velez-Riveria, (202) 395–7313.

Title: Organization Management and Public Policy Factors that Promote Industry Related R&D in Universities.

Affected Public: Non-Profit Institutions.

Number of Responses: 600; total of 600 hours.

Abstract: University research is a source of industrial productivity improvement, but the factors that encourage industry/university linkage are unknown. Data will be acquired from universities. The data may be used to identify effective industry/university research strategies.

Dated: September 21, 1983.

Herman G. Fleming,

OMB Clearance Officer.

[FR Doc. 83-26400 Filed 9-27-83; 8:45 am]

BILLING CODE 7555-01-M

Behavioral and Neural Sciences Advisory Panel, Subpanel on Neurobiology Group "B"; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Neurobiology of the Advisory Panel for Behavioral and Neural Sciences.

Date and time: October 17, 18, and 19, 1983; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, N.W. Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Nathaniel G. Pitts, Associate Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357–7471.

Purpose of panel: To provide advice and recommendations concerning support for research in neurobiology.

To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 23, 1983.

[FR Doc. 83-26389 Filed 9-27-83; 8:45 am]

BILLING CODE 7555-01-M

Behavioral and Neural Sciences Advisory Panel, Subpanel on Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Social and Develpmental Psychology of the Advisory Panel for Behavioral and Neural Sciences.

Date and time: October 17, 18, 1983; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Jean B. Intermaggio, Program Director, Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, 202–357–9485.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: To review and evalutae research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 23, 1983.

[FR Doc. 83-26398 Filed 9-27-83; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and time: October 15, 1983; October 16, 1983; 9:00 am–6:30 pm 9:00 am–5:30 pm

Place: Room R–150, Building 203 (Physics), Argonne National Laboratory, Lemont, Illinois.

Type of meeting: Open.

Contact person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, DC 20550 202/357–7993.

Summary minutes: May be obtained from Ms. Dawn Frohlich, Physics Division, National Science Foundation, Washington, DC 20550.

Purpose of committee: To provide advice on continuing basis to both DOE and NSF on the management of and long range planning for basic nuclear science in the United States.

Agenda:

October 15, 1983, 9:00 am–6:30 pm

Discussion of the 1983 Long Range Plan for Nuclear Science

October 16, 1983, 8:00 am–5:30 pm

Continuation of the discussion of the 1983 Long Range Plan for Nuclear Science

M. Rebecca Winkler,

Committee Management Coordinator.

September 23, 1983.

[FR Doc. 83-26397 Filed 9-27-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Deficiencies in Management and Procedural Controls

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). Example I.D.3 notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence. The following description of the incident also contains the remedial actions taken to date.

Date and Place—On February 18, 1983, the NRC issued a notice of violation and proposed imposition of civil penalties (for $600,000) to Carolina Power and Light Company, licensee for Brunswick Units 1 and 2. The action was based on violations involving technical specification surveillance requirements. Brunswick Units 1 and 2 are General Electric designed boiling water reactors located in Brunswick County, North Carolina.

Nature and Probable Consequences—Inspection findings indicated that the Brunswick facility had been operated, in some cases since the issuance of the operating licenses (December 1974 for Unit 2 and September 1976 for Unit 1), without certain surveillance procedures and verification by surveillance testing of a number of safety systems and components. In addition, it was found that the licensee's quality assurance program failed to correct the problem once the lack of one of the surveillance procedures was identified. Even though testing performed subsequent to the identification of the missed surveillance demonstrated the affected equipment to be operable, the deficiencies were of serious safety concern, i.e.: (a) The facility had been operated for an extended period of time without the necessary assurance that the equipment would function properly if called upon, and (b) the violations, when viewed collectively, and in light of later identified examples of failures to meet limiting conditions for operation and surveillance requirements, suggested a programmatic failure that unless corrected could lead to more serious events. A summary of the history leading to the February 18, 1983 NRC action follows.

On June 28, 1982, Unit 1 reactor lost voltage to certain emergency electrical busses and tripped. It was returned to power on June 29. The licensee's post-trip evaluation of the event revealed that certain relays associated with the emergency electrical busses of Units 1 and 2, although they functioned properly, had not been tested or calibrated as required by technical specifications. Action statements for the relevant limiting conditions for operation required shutdown of Unit 1 (Unit 2 was shut down for refueling) until test and calibration of the relays were accomplished.

On June 30, the licensee requested and was granted NRC approval for continued operation of Unit 1 while the required tests and calibrations were being performed. On July 2, NRC Region II issued a Confirmation of Action Letter confirming the licensee's commitment to review all technical specification surveillance requirements and the administrative control system for

assuring that surveillance requirements were met.

On July 15, NRC Region II was informed that the licensee review of technical specification surveillance requirements had revealed additional missed surveillance requirements that were not covered by procedures. The tests involved limiting conditions for operation and required implementation of action statements for continued operation of Unit 1. Upon discovery of these missed surveillances, the licensee wrote the necessary procedures and conducted the required tests. The test results showed that the equipment would have functioned if called upon.

On July 16, NRC inspectors informed NRC Region II and Brunswick management that containment leakage tests of certain penetrations and valves had not been conducted at the require frequency. Although the licensee had implemented appropriate procedure changes on Unit 2 in June 1982, no procedure change had been implemented for Unit 1 which had similar requirements. On receipt of this information, Unit 1 was shut down. The NRC Region II Administrator and the Executive Vice President of the licensee discussed the situation by telephone. It was agreed that neither unit would be operated until the licensee had completed a comprehensive review of technical specification surveillance requirements, corrected such violations as might be disclosed by the review, identified the root causes of the violations, and presented the Commission a proposed revision of its management control program to prevent recurrence of similar violations.

On July 20, NRC Region II issued a Confirmation of Action Letter detailing broad commitments made by the licensee in several previous telecommunications. The letter covered certain specific assignments of review responsibility for the corporate Nuclear Safety and corporate Quality Assurance staffs, implementation of an extensive training program, assignment of a full-time operationally qualified corporate representative on site, assignment of a special corporate panel to review the adequacy of corrective actions which the licensee had committed to take, and formal notification of NRC Region II prior to resumption of Unit 1 or Unit 2 power operation.

On August 24, an enforcement conference was held at the NRC Region II office. The NRC Region II Administrator reviewed NRC inspection findings relating to facts disclosed since June 28, expressed NRC concerns about the failure of corporate and facility management controls to prevent the violations indicated by the findings and asked the licensee what actions had been taken or were planned to reestablish satisfactory management control of licensed activities. The Senior Vice President of the licensee presented recommendations and conclusions furnished to the licensee by a panel of senior management officers from the nuclear power industry, retained by the licensee to review the adequacy and completeness of actions taken, and to recommend additional management actions needed to assure future compliance with the Brunswick technical specifications. The Senior Vice President detailed the actions taken or planned to meet each item identified in Region II Confirmation of Action Letters dated July 2 and July 20. Beyond the commitments previously made, the licensee described an improvement program involving extensive assignments of corporate and facility staff responsibilities designed to achieve basic improvement in management, operations, and quality assurance performance. The licensee stated that commitments made during the conference would be incorporated in its improvement program which would be submitted in a comprehensive report to the NRC Region II Administrator by November 1, 1982. This report was submitted on October 29, 1982.

The actions described in the licensee's long-range improvement program were the subject of an NRC Confirmatory Order issued by the Director of the NRC Office of Inspection and Enforcement on December 22, 1982. On that same date another enforcement conference was held in the NRC Region II office with senior managers of the licensee. During that meeting, additional events similar in nature to those identified previously and which had recently been revealed to the licensee's Brunswick facility, were discussed. On January 23, 1983, still another event occurred. These events heightened the NRC's concerns regarding the safe operation of the licensee's facility.

Cause or Causes—The cause of the violations was attributed to a breakdown in corporate and facility management controls in the areas of corporate oversight, facility management and operations, and problem identification and correction. The violations, particularly considering the length of time the violations continued undetected and the failure to take action to correct problems that were identified, raised serious concerns about the adequacy of the safety of operation of the facility in regard to properly protecting the health and safety of the public.

Actions Taken To Prevent Recurrence

Licensee—In response to the issues raised by the NRC during 1982, the licensee undertook a self-appraisal program commencing in July 1982. In addition to short term corrective actions, a Brunswick Improvement Program was developed and submitted to the NRC on October 29, 1982. The Improvement Program had previously been reviewed by an External Safety Review Panel composed of nuclear power industry professionals; the Panel was chaired by a vice president of the Institute of Nuclear Power Operations (INPO). The Improvement Program contained seven objectives, together with the associated action items, plans for implementing each action item, and an identification of personnel accountabilities. The seven objectives are as follows:

1. Ensure full and timely compliance to all surveillance requirements, regulatory commitments, and regulatory requirements.

2. Ensure that all necessary procedures (including those resulting from plant modifications and new requirements) exist and are clear, unambiguous, precise, complete, and of high technical quality.

3. Increase frequency and scope of QC surveillance and corporate auditing program activities.

4. Ensure the maintenance activities do not degrade or render inoperable any component, system, or instrument.

5. Increase the proficiency of plant personnel by means of expanded training programs.

6. More effectively utilize the technical expertise of the onsite and corporate nuclear safety personnel in enhancing the safety and reliability of plant operations.

7. Undertake actions to enhance and strengthen the management control and organizational discipline necessary to provide for safe and reliable operation.

The details of the long-range Improvement Program and the results of the near-term corrective actions were discussed with the licensee in a meeting at the NRC Region II office on November 10, 1982, in a meeting at the Brunswick site on January 6, 1983, and in a meeting with the NRC Executive Director for Operations in Bethesda, Maryland on January 19, 1983. In addition to inauguration of the Improvement Program, other actions taken included: (a) Placement of a senior corporate official at the Brunswick site, (b) visiting several other utilities to examine their programs, (c) assuring that lessons learned at Brunswick would also be applied at the licensee's other

plants (Robinson and Harris facilities), (d) identifying every technical specification surveillance requirement and assuring that an undated, written procedure exists for each, and (e) establishing a computerized system for monitoring technical specification compliance.

Most of the licensee's action items for the Improvement Program were scheduled for completion during the last quarter of 1982 and first quarter of 1983; some items would not be complete until the last quarter of 1983.

NRC—The NRC has taken numerous actions to convey the NRC's concern for the lack of diligence demonstrated by the licensee in implementation of technical specification requirements, and to assure that the licensee has taken and will continue to take thorough and effective corrective actions. As discussed previously, these actions included inspections, telephone communications, enforcement and other meetings, and Confirmation of Action Letters.

In addition, on February 18, 1983, the NRC issued a letter with a Notice of Violation and Proposed Imposition of Civil Penalties (for $600,000) to the licensee. The letter contained a chronology of the events leading to the enforcement action and again emphasized the NRC's concern with the identified deficiencies. The violations cited the missed surveillance testing of certain safety systems and the failure to correct the problem once the lack of one of the surveillance procedures was identified.

The enforcement letter also stated that it was vital that effective communications with and between all segments of the licensee's staff be established and that all segments of the operations staff be involved in identifying programmatic deficiencies and in developing procedures to remedy those deficiencies. Accordingly, in response to the Notice of Violation and Proposed Imposition of Civil Penalties, the licensee was directed to describe the efforts taken and to be taken to ensure that effective communications between management and staff are established and maintained.

The licensee later requested additional time in which to respond. The NRC subsequently agreed. The licensee paid the civil penalty on August 1, 1983. The NRC will continue to closely monitor the licensee's actions to ensure that they are thorough and effective.

Dated in Washington, D.C. this 22nd day of September 1983.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 83-26450 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrence Report; Main Feedwater Line Break Due to Water Hammer

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). Example I.D.2 notes that a major deficiency in design having safety implications requiring immediate remedial action can be considered an abnormal occurrence. The following description of the incident also contains the remedial actions taken to date.

Date and Place—On January 25, 1983, the Maine Yankee Nuclear Power Plant experienced a reactor trip followed by loss by main feedwater and automatic initiation of the auxiliary feedwater system. The auxiliary feedwater initiation resulted in a water hammer transient in the feedwater lines for two of the three steam generators with a resultant feedwater pipe rupture. the Maine Yankee plant is a Combustion Engineering designed pressurized water reactor (PWR), operated by Maine Yankee Atomic Power Company (the licensee), and located in Lincoln County, Maine.

Nature and Probable Consequences—The Maine Yankee Plant uses a three loop reactor coolant system design. Each loop contains a steam generator (SG), a reactor coolant pump and associated connecting piping. The steam generator employs a vertical U-tube design. Feedwater is normally provided to the secondary side of each steam generator by operating one of two motor-driven main feedwater pumps when the plant power level is less than 50%, or a turbine-driben feedwater pump for power levels greater than 50%. (Note: This feedwater arrangement is a new configuration. Until recently, the plant did not have a turbine-driven feedwater pump; main feedwater was provided only by motor-driven pumps for all power levels.) If all sources of main feedwater are lost, an auxiliary feedwater system is available to supply the three SGs using portions of the normal feedwater lines.

On January 25, 1983, the plant was operating near 100% power in its new configuration, with only its new turbine-driven feedwater pump supplying feedwater. Both motor-driven feedwater pumps were out of service for maintenance. While operators were attempting to isolate an electrical ground in the control rod drive systems, a reactor trip occurred. As a result, both the main turbine and the turbine-driven feedwater pump tripped. This resulted in a complete loss of normal feedwater flow, followed by a normal reduction in SG water level associated with reactor trips. When the SG water level reached approximately 30% (on the narrow range indicator), auxiliary feedwater flow automatically initiated, as designed.

Approximately 15 minutes after the trip, a loud noise was heard in the plant machine shop. The shop is just below the main feedwater lines. Additionally, a containment fire detector (temperature sensitive) alarmed and containment humidity began to rise. The containment was entered for inspection and the feedwater line for SG No. 2 was found to be leaking severely near the inlet nozzle. The leak rate was estimated to be a maximum of 100 gpm.

Feedwater flow to SG No. 2 was terminated and its level maintained by interconnecting the tube sheet drains for all three SGs. Normal station cooldown was initiated to facilitate inspection and repair. Reactor coolant system parameters were stable and within normal ranges for this operating condition. During the cooldown period of about twelve hours, leakage continued through the feedwater lines. This spillage was removed and disposed of through the containment auxiliary sump drain system.

Subsequent inspection of the SG No. 2 feedwater piping showed that the through-wall crack had occurred in the pipe adjacent to the weld joining the pipe and SG safe end. It is believed that the water hammer had caused an existing crack to propagate on through the pipe wall. The location of the crack coincided with a stress area in the pipe where previous PWR experience had identified the likelihood of thermal stress cracking. Radiographic examinations showed similar cracking had also begun on the SG No. 1 and No. 3 feedwater pipes. Further examinations showed various degrees of damage to some snubbers and other supports for the SG No. 2 and No. 3 feedwater lines, a feed ring support for SG No. 3, and the safe ends and nozzles (including

distorted thermal sleeves) for SG No. 2 and No. 3.

Cause or Causes—The cause of the event is attributed to incomplete consideration, in ongoing design and operational plant upgrading, of previous generic safety concerns related to steam generator water hammer and feedline thermal stress cracking. The installation of a steam turbine-driven main feed pump and automatic initiation of the cold water auxiliary feedwater system without the addition of SG J-tubes and operational procedures to alleviate these concerns increased the potential for feedwater piping thermal shock and water hammer at Maine Yankee.

The water hammer probably occurred when the outlet nozzle at the bottom of the SG feed ring became submerged in the rising SG water level and the steam in contact with the cold feedwater within the ring suddenly collapsed. Before the design and operational changes were made, the plant had apparently not experienced any water hammers. Review of plant operating history indicated that all full load trips were followed by continuous main feedwater flow to the SGs via the bypass valves. (These valves bypass the normal feedwater regulating valves at low flow rates.) This feedwater was provided by the motor-driven main feedwater pumps that continued to operate, feeding about 5% of full flow to each SG through the bypass valves, following the trip. Hence, warm feedwater was supplied, minimizing the potential for thermal shock and water hammer. In the two prior trips in which main feedwater was lost due to loss of electric power, power levels were below 50%, so SG level shrinkage was less. Also, the auxiliary feedwater system was manually started and the flow rate controlled by the plant operators.

In the January 25, 1983 event, the trip was from full power and since the turbine-driven feedwater pump tripped, all warm feedwater was lost. Subsequently, auxiliary feedwater automatically initiated. However, the auxiliary feedwater was drawn from the demineralized water storage tank (DWST) at 60° F. By comparison, normal feedwater temperature is about 440° F. The extreme temperature differential between the normal and auxiliary feedwater can cause two problems. First, it can cause potentially high thermal stresses and cracking in the feedwater piping. Second, it may rapidly condense any steam in the feed lines, leading to a higher possibility of water hammer in the feed ring and feedwater line.

Actions Taken To Prevent Recurrence

Licensee—Repairs were made to components damaged by this event. This included replacing cracked (and/or broken) feedwater piping and the replacement or repair of damaged piping supports and SG internals.

A design change was implemented adding J-tubes to the top of the SG feed rings. This change increases the area for pressure equalization. It also reduces the rate at which the feed rings drain when the SG water level drops below the feed ring after a trip; thus, on early initiation of auxiliary feedwater flow, the feedwater line and feed ring are expected to remain full. The design change has been used at other plants, such as Millstone Unit 2 and Calvert Cliffs Units 1 and 2, to reduce the possibility of water hammer events.

A number of operational changes also were made, for various modes of plant operation, to reduce the differential in temperature between the main feedwater and the auxiliary feedwater.

These design and operational changes minimize the potential for future water hammer; some of the changes will also minimize the thermal cycling of the feedwater lines and steam generator feedwater nozzles, and minimize the potential for any future thermal fatigue failures.

The licensee conducted a series of tests to verify the integrity of the feedwater lines and to verify that the design and operational changes were effective. The licensee reported that the tests were successful.

The licensee also plans to perform a longer range program to determine what further changes should be made to minimize the potential for recurrence of the event.

NRC—The NRC held meetings with the licensee and by means of inspections and analyses evaluated the licensee's corrective actions. The NRC prepared a safety evaluation report, dated March 18, 1983, justifying the plant's return to power operation.

Dated in Washington, D.C. this 22nd day of September 1983.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 83-26461 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrence; Failure of Automatic Reactor Trip System

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health or safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). Example I.D.2 notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence. The following description of the incident also contains the remedial actions taken to date.

Date and Place—On February 22, 1983 and again on February 25, 1983, the Salem Unit 1 reactor control rods failed to insert upon receipt of an automatic trip signal from the reactor protection system. However, the rods did insert and shut down the plant upon receipt of a manually initiated trip signal. Salem Unit 1 is a Westinghouse designed, pressurized water nuclear power plant located in Salem County, New Jersey. The plant is operated by Public Service Electric and Gas Company (the licensee).

Nature and Probable Consequences—Nuclear plants have safety and control systems to limit the consequences of abnormal operating conditions. "Anticipated transients" are defined as abnormal operating conditions (e.g., loss of feedwater, loss of offsite power, tripping of the turbine generator), which are likely to occur one or more times during the life of the nuclear power plant. In some such cases, a rapid shutdown of the nuclear reactor (fast insertion of the control rods into the reactor core-a reactor trip) is an important safety measure to assure that acceptable fuel design limits are not exceeded. If there were a potentially severe transient, and the reactor shutdown system did not function as designed, then an "anticipated transient without scram," or ATWS, would have occurred. ATWS safety issues have been under study by the AEC, NRC, and the nuclear industry for a number of years. A proposed ATWS technical position and ATWS rule are presently being developed by the NRC.

The reactor protection system (RPS) is a safety-related system which encompasses all electrical and mechanical devises and circuitry (from sensors to actuation device input terminals) involved in generating those signals associated with the protective function. These signals include those that actuate reactor trip. The reactor trip system (RTS) is part of the RPS and includes those power sources, sensors, initiation circuits, logic matrices, bypasses, interlocks, racks, panels and

control boards, and actuation and actuated devices that are required to initiate reactor shutdown. The RTS is designed to initiate automatically the reactivity control system (control rods) to shut down the reactor, thereby assuring that acceptable fuel design limits are not exceeded, and is designed to fail safe for most internal component failures. The RTS can also be actuated manually by operator action.

Westinghouse designed plants use two redundant reactor trip breakers (RTBs) in series in the RTS. For the Salem Unit 1 plant, each RTB includes an undervoltage (UV) trip attachment and a shunt trip attachment to actuate (open) the trip breaker. The UV device initiates a breaker trip when de-energized while the shunt device initiates a breaker trip when energized. For an automatic trip, only the UV device is actuated; initiation of the UV devices in either or both RTBs will actuate the control rods. A manual trip signal operates both the UV device and the separate shunt device. Either device is designed to cause the RTBs to open. Salem Unit 1 uses Westinghouse DB–50 type RTBs.

At 12:21 a.m. on February 25, 1983, a low-low water level condition in one of the four steam generators at Salem Unit 1 initiated a reactor trip signal in the RPS. The reactor was at 12% rated thermal power at the time preparatory to power escalation after a recently completed refueling outage. Upon receipt of the valid reactor trip signal, both of the redundant RTBs failed to open (opening of either RTB would have caused the reactor to trip). About 25 seconds later, operators manually initiated a reactor trip from the control room. The RTBs opened as a result of the manual trip signal and this resulted in insertion of all control rods and shutdown of the reactor. Following the manual trip, the plant was stabilized in the hot standby condition. All other systems functioned as designed. Later that morning when the cause of the failure had been determined by the licensee, the plant was placed in cold shutdown at the request of the NRC.

During investigation of this incident on February 26, 1983 by the NRC, it was found that a similar failure had occurred on February 22, 1983 at Salem Unit 1. At 9:55 p.m. on February 22, with the reactor at 20 percent power, operators were attempting to transfer the 4160 volt group electrical busses from the station power transformers to the auxiliary power transformers, a routine evolution during power escalation. During the transfer attempt, one of the 4160 busses failed to transfer and de-energized, resulting in the loss of one reactor coolant pump and power for the operating main feed pump control and indication. At 9:56 p.m., a low-low level condition occurred in one steam generator (due to the loss of the main feed pump), initiating a reactor trip signal. Due to the abnormal conditions created by the loss of the 4160 volt bus and in anticipation of loss of steam generator water levels, the operator was directed at about the same time to manually initiate a reactor trip. It was understood by plant personnel and was reported to the NRC that the automatic reactor trip signal due to the low-low level in one steam generator had, in fact, caused the reactor to trip. On February 26, 1983, as a result of NRC queries, the sequence of events computer printout for February 22 was reviewed in detail and it revealed that the RTBs actually opened in response to the operator's manual trip signal. Consequently, it is now evident that on February 22 (as on February 25) the two RTBs failed to open upon receipt of an automatic trip signal from the RPS.

Since the operators initiated a manual reactor trip shortly after receipt of the automatic trip signals on both February 22 and February 25, no adverse consequences occurred and the reactor was in a safe condition. On February 22, the operators initiated a manual trip even though they were unaware that the automatic trip had failed.

These events at Salem Unit 1 were of major safety concern since all redundancy was lost to automatically trip the reactor when plant operating conditions required a fast shutdown to protect the integrity of the reactor core. Safe control of anticipated operating transients is strongly dependent on the reliable and fast operation of reactor trip, either automatically or manually.

Other pressurized water reactors (PWRs) have experienced RTB failures, both before and after the February 1983 Salem Unit 1 events. None of them, however, involved an ATWS event. With few exceptions, all PWR plants designed by the three nuclear steam system suppliers (Westinghouse, Babcock & Wilcox, and Combustion Engineering) use an RTS design requiring circuit breakers to open to trip the reactor. Although the basic designs of the RTSs and the number of RTBs per plant differ considerably among the plant designers, each RTB generally includes a UV trip attachment and a shunt trip attachment to actuate the circuit breaker. Westinghouse designed plants use a Westinghouse type breaker (DB type being the most common) while the other two PWR designers use a General Electric type breaker (AK type).

The RTB failures prior to the February 1983 events at Salem Unit 1 have been the subject of several actions taken since 1971 by the AEC/NRC, Westinghouse, and General Electric.

The AEC issued IE Bulletin No. 71–2 on December 9, 1971 as a result of three failures of Westinghouse DB–50 type RTBs at Robinson Unit 2 during 1971, and two failures of similar breakers at Haddam Neck (Connecticut Yankee) on December 2, 1971. The Bulletin informed operating PWR licensees of the RTB failures and requested information on the results of testing, inspections, and corrective actions taken or planned by other facilities using similar RTBs. Following further failures at Robinson Unit 2 on December 21, 1973, Westinghouse issued Technical Bulletin NSD–TB–74–1 on January 11, 1974, and NSD Data Letter 74–2 on February 19, 1974, regarding recommendations for inspection/maintenance of DB type breakers.

Because of failures of General Electric AK type reactor breakers at Arkansas Unit 1, Crystal River Unit 3, Oconee Units 1 and 3, and Three Mile Island Unit 1, between April 25, 1975 and January 31, 1979 (and additional failures of similar breakers used in other safety-related applications), the NRC issued IE Bulletin No. 79–09 on April 17, 1979. The Bulletin, which included General Electric Service Advice Letter (SAL) No. 187 (CPDD) 9.3 regarding inspection/maintenance of AK type breakers, stipulated requirements for establishing and performance of an acceptable preventive maintenance program for the RTBs.

Further, due to a November 30, 1980 breaker event at St. Lucie due to an adjustment problem, the NRC issued IE Circular No. 81–12 on July 22, 1981 in regard to recommended procedures for independently testing the UV and shunt trip devices.

Cause or Causes—On February 25, 1983, approximately two hours after the Salem Unit 1 event, the cause of the failure to trip was determined by licensee instrumentation technicians to be failure of the UV trip device in both RTBs to function as designed. The same problem had occurred on February 22, 1983, but it was not recognized by the licensee. As previously discussed, the plant on both occasions was shut down by manual operator action. Possible contributors to the failure of the UV trip devices are: (1) Dust and dirt; (2) lack of lubrication; (3) wear; (4) more frequent operation than intended by design; and (5) nicking of latch surfaces caused from

repeated operation of the breakers. Based on an independent evaluation of the failed UV trip devices identified by the licensee, the NRC staff concluded that, while the Salem Unit 1 breaker failures occurred as a result of several possible contributors, the predominant cause was excessive wear accelerated by lack of lubrication and improper maintenance.

It appears that no preventive maintenance was conducted on the Salem Unit 1 DB-50 circuit breakers until January 1983. Additionally, the lubrication recommendations of the Westinghouse 1974 Technical Bulletin and Data Letter were not implemented during the January 1983 maintenance, since personnel performing the maintenance (including a Westinghouse service representative) were not aware of this information. The January maintenance was performed because of a breaker problem which occurred at Salem Unit 2 on January 6, 1983. In this event, a reactor trip occurred due to a low-low water level condition in one steam generator and only one RTB operated. The second RTB finally opened 25 minutes later, although the reactor had already tripped from opening of the other RTB. The failure of this RTB was concluded by the licensee to be due to dirt and corrosion interfering with proper operation of the UV trip device. As a result of this event, maintenance was conducted on all Unit 1 RTBs, at least one of which involved supervision of the RTB vendor, Westinghouse. The licensee also reported that all reactor trip breakers were tested after maintenance per plant procedures.

The licensee had also experienced a similar breaker problem at Salem Unit 2 on August 20, 1982; during surveillance, a RTB did not trip due to binding of the UV coil solenoid.

As noted previously, the licensee failed to recognize on February 22, 1983 that an ATWS event had occurred. This was due to a lack of a thorough and systematic review to achieve the necessary understanding of the event. This, and certain previously identified problems at Salem, indicated that a number of corrective actions were necessary before the plants would be allowed to return to operation.

Actions Taken To Prevent Recurrence

Licensee—The licensee has completed or committed to complete many corrective actions to address various issues concerning RTBs; operator procedures, training and response; and management issues. Actions taken by the licensee concerning the RTBs include installing new UV trip devices on Salem Units 1 and 2 which incorporate all design changes made to the devices, augmenting surveillance test requirements, developing a comprehensive maintenance procedure, and incorporating Westinghouse recommendations regarding maintenance and testing. Actions concerning operator procedures, training, and response issues include revising emergency procedures to identify actions to be taken in the event a reactor trip signal is received, conducting additional operator training, and evaluating certain aspects of the control room design. Actions concerning management issues include reviewing past maintenance and procurement documents to ensure that the problems associated with the RTBs did not extend to other safety systems; strengthening administrative controls over maintenance, procurement and post-maintenance testing activities; establishing additional safety review groups within the company; developing a formal post-trip review procedure; instituting a program to update vendor-supplied information; and subjecting the company to independent management assessment by external consulting organizations.

As discussed later, the NRC has accepted the licensee's corrective action program.

Vendors—Westinghouse formed an intercompany task force to conduct an internal review of their procedures for dissemination of technical information to utilities. In addition, they reviewed the testing program for the breakers.

Since there were generic implications associated with the Salem Unit 1 events, Westinghouse worked with the Owners Group (licensees of Westinghouse designed plants) to review operating and emergency procedures, to review for similar type failures in other plant systems, and to assure that the owners have a current listing of current Westinghouse technical information.

Westinghouse also developed updated maintenance procedures for RTBs which will be given to the licensees with DB type breakers.

In addition, based on Westinghouse's review of problems experienced with their DS type breakers at the Farley and McGuire facilities, they have alerted the NRC and appropriate licensees to potential deficiencies involving clearance and dimensional problems and retaining ring seating defects which could create conditions under which the RTBs might not open automatically on demand from the RPS. Westinghouse also developed procedures for the affected licensees to follow. DS type breakers are presently used in five operating plants (Farley Units 1 and 2, McGuire Units 1 and 2, and Summer) and specified for use in 24 plants still under construction.

Combustion Engineering and Babcock & Wilcox also made similar reviews and, in cooperation with General Electric, developed updated maintenance procedures for RTBs which will be given to the licensees with AK-2 type breakers.

Other Licensees—In response to NRC Inspection and Enforcement Bulletin Nos. 83-01 and 83-04 (discussed later), the licensees either performed the RTB testing required (or stated why they were exempt) or provided a schedule for when it would be performed, and took the other actions required by the Bulletins regarding maintenance, operating procedures, etc. During, and subsequent to the required testing, additional cases of RTB failures occurred.

NRC—Following the February 25, 1983 event at Salem Unit 1, the NRC sent engineers to the plant to review the circumstances associated with the event. As a result of questions asked by the NRC on February 26, 1983 the licensee again reviewed the circumstances associated with the February 22, 1983 reactor trip and it was discovered that the reactor tripped because of the operator's manual trip signal, rather than from an automatic trip signal as originally reported by the licensee.

Meanwhile, due to the seirous nature of the known automatic trip failure in both redundant RTBs on Feburary 25, 1983, the NRC issued Inspection and Enforcement Bulletin No. 83-01 on the same day to all pressurized water nuclear power reactor facilities holding an operating license for action and to other nuclear power reactor facilities for information. The Bulletin informed the licensees of the Salem Unit 1 February 25, 1983 event in which both Westinghouse DB type breakers failed to open automatically (the similarity of the February 22, 1983 event had not yet been ascertained) and mentioned that failures involving only one of the two breakers have previously occurred at Salem Unit 2, Robinson Unit 2, Connecticut Yankee, and St. Lucie. The Bulletin referenced the two previously discussed pertinent NRC documents; i.e., Inspection and Enforcement Bulletin No. 71-02 and Circular No. 81-12, which were issued on December 9, 1971 and July 20, 1981, respectively. Also mentioned were the previously discussed Westinghouse issued technical information on their breakers, i.e., Technical Bulletin No. NSD-TB-74-1

dated January 11, 1974 and NSD Data Letter 74–2 dated February 14, 1974. Action items required of licensees using Westinghouse DB type breakers by Bulletin No. 83–01 included: (a) Testing of the Westinghouse DB type breakers, (b) assuring maintenance is in accordance with the recommended Westinghouse program, (c) notifying licensed operators of the Salem Unit 1 events, (d) reviewing with the operators the procedures to follow in the event of failure of trip, and (e) reporting the results to the NRC.

On February 28, 1983, the NRC Executive Director for Operations (EDO) directed that NRC Region I was to develop a detailed report of the Salem Unit 1 events; this report was subsequently issued as NUREG–0977. The EDO further directed that a special NRC task force be formed to evaluate the generic implications of the events.

During the testing required by Bulletin No. 83–01, no further failures of Westinghouse DB type RTBs occurred. However, even though not required to do so by Bulletin No. 83–01, Southern California Edison decided to test the General Electric type AK–2 breakers on their Combustion Engineering designed San Onofre Units 2 and 3. On March 1, 1983, one of eight RTBs in Unit 3 failed to trip on undervoltage. On March 8, 1983, three of eight RTBs in Unit 2 failed to trip on undervoltage. (Note: Contrary to the Salem design in which an automatic trip signal is fed only to the UV trip devices, the signal is fed to both the UV and shunt trip devices for the San Onofre Units 2 and 3 design. The shunt devices were satisfactorily tested; therefore, the RTBs would have tripped from an automatic trip signal during operations.) During the investigations of these events, it was found that previous failures had occurred at these units during 1982 but had not been reported to the NRC.

Accordingly, Inspection and Enforcement Bulletin No. 83–04 was issued on March 11, 1983 to all pressurized water nuclear power reactor facilities holding an operating license except those with Westinghouse DB type breakers for action and to other nuclear power reactor facilities for information. The Bulletin described the San Onofre events and mentioned that similar events involving the General Electric AK–2 type breakers had previously occurred at Arkansas Unit 1, Crystal River Unit 3, Oconee Units 1 and 3, Three Mile Island Unit 1, St. Lucie Unit 1, and Rancho Seco Unit 1. The Bulletin referenced the two previously discussed pertinent NRC documents; i.e., Inspection and Enforcement Bulletin No. 79–09 (which included General Electric recommended data on the AK–2 type breakers) and Circular No. 81–12 which were issued on April 17, 1979 and July 20, 1981, respectively. Action items to be taken included: (a) Actions similar to those required by Bulletin No. 83–01, (b) licensees to provide a description of all RPS breaker malfunctions not previously reported to the RNC, and (c) licensees to verify that procurement, testing, and maintenance activities treat the RPS breaker and UV devices as safety-related.

In response to Bulletin No. 83–04, additional cases of RTB failures were reported to the NRC. In addition, other failures occurred after the testing required by Bulletin Nos. 83–01 and 83–04. In all cases, the NRC closely monitored the corrective actions taken by the licensees to assure that the plants were safe for continued operation.

On April 1, 1983, the NRC issued Inspection and Enforcement Information Notice No. 83–18 to all nuclear power reactor facilities holding an operating license or construction permit. The Notice included the following:

(a) The results of the testing required by Bulletin Nos. 83–01 and 83–04 and that the results show that the breakers may not be achieving the performance reliability expected of them, apparently due to the UV trip attachments.

(b) The problem has ramifications not only for RTBs, but similar breakers used in other plant applications.

(c) The importance of regular, careful maintenance of RTBs. Updated maintenance procedures have been developed by all PWR vendors.

(d) There may be limitations associated with the design life of UV devices such that periodic replacement may be necessary due to wear.

(e) The torque available to trip the General Electric AK–2 breaker by the UV device is critical to proper operation so that certain measurements are needed periodically to detect the onset of problems.

(f) The importance of a thorough post-trip analysis, including close scrutiny of the events recorder.

The special NRC task force prepared a report (NUREG–1000, Vol. 1) in regard to the generic implications of the Salem events. A second report will document the NRC actions to be taken based on the work of the task force. The Commission is being kept informed of progress. The results of the task force may also affect the ATWS position and rule which, as previously discussed, are being developed by the NRC.

Several briefings were given to the Commissioners by the staff in regard to the Salem problems and other ongoing studies. The Commission did not permit the Salem plans to restart until not only short term corrective actions were satisfactory, but also until certain management improvements had been satisfactorily addressed. As noted above, the licensee agreed to permit outside consulting firms to evaluate management effectiveness at the Salem plants. After reviewing the consultants' recommendations, the licensee will generate a plan to incorporate them. On April 26, 1983, the Commission agreed that the plants could be returned to service after the NRC staff is satisfied with the licensee's commitment to meet certain restart conditions.

The licensee's commitments for both restart and long term conditions, including schedule for implementation, were submitted to the NRC on April 28, 1983. The NRC incorporated these commitmens into an Order dated May 6, 1983. The licensee's commitment for restart was: "Before entering any new mode, all systems and components required to be operable for that mode, in accordance with Technical Specifications, shall be reviewed to confirm operability. If all or part of a system or component has not been shown to be operable within 30 days prior to April 28, 1983, a review shall be conduced to determine if maintenance or other activity has taken place on such system or component since the last operability confirmation. If such maintenance or other activity has taken place, operability shall be verified by applicable surveillance testing and/or preparation of a written analysis, available for NRC inspection, demonstrating that the system or component is capable of performing its intended function. This procedure will be followed until the first entry into Mode 1 for each unit subsequent to April 28, 1983." The review of documentation and additional surveillance testing necessitated by the licensee's commitment delayed plant startup until May 20, 1983.

The NRC safety evaluation related to plant restart was forwarded to the licensee by a letter dated April 29, 1983. It is planned to issue the safety evaluation report as NUREG–0995.

On May 5, 1983, the NRC forwarded to the Salem Licensee a Notice of Violation and Proposed Imposition of Civil Penalties (for $850,000). Violations include operation of the reactor even though the RPS could not be considered operable and several significant

deficiencies which contributed to the inoperability of the RTBs. On July 6, 1983, the licensee requested mitigation of the proposed civil penalty. The licensee's request is being reviewed by the NRC.

Region I has instituted an augmented inspection program at salem to monitor the licensee's progress towards completion of longer term corrective actions, including the consultants' recommendations as noted above.

The general issues associated with RTB failures remain under active review by the nuclear industry and the NRC.

Dated in Washington, D.C. this 22d day of September 1983.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 83-26482 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Import/Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b)"Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following applications for import/export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commissission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated at Bethesda, Maryland, this 22nd day of September.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, application number	Material in kilograms or reactor type and power level		Enrichment	End use	Country of destination
	Element	Isotope			
General Electric Co., Aug. 23, 1983-Aug. 26,1983, XSNM02069.	40,353	1,176	4.0 percent	Reload fuel for Fukushima I, unit 6	Japan.
U.S. Department of Energy, Aug. 23, 1983-Aug. 26, 1983, XSNM02070.	12 2		Depleted U plutonium	Fabricate mixed oxide fuel for use in fast breeder program	Japan.
Braunkohle Transport USA, Aug. 29, 1983-Aug. 31 1983, XSNM02071.	20,670	583	3.80 Percent	Reload fuel for Kernkraftwerk Wurgassen	West Germany.
G A Technologies Inc., Aug. 29, 1983-Aug. 31, 1983, ISNM01652 (Amdt. 03).	[1]376 gms add'l	[1]350 gms add'l	93 Percent	Increase quantity of material to be imported and extend date of import license of Oct. 1, 1986.	From West Germany.

[1]Grams additional.

[FR Doc. 83-26483 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 1, 1982 (47 FR 43474), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information-gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to radiological safety. ACRS full Committee and Subcommittee meetings are conducted in accordance with sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.).

General Rules Regarding ACRS Meetings

An agenda is published in the Federal Register for each meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, D.C., reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Employee specified in the Federal Register notice for the individual meeting in care of the ACRS, NRC, Washington, D.C. 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a

request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee or Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a 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, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone 202–634–3265, Attn: the Designated Federal Employee specified in the **Federal Register** notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, D.C. time.

(d) Questions may be asked only by ACRS Members, Consultants and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Employee prior to the beginning of the meeting.

Dated: September 23, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-26487 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–298]

Nebraska Public Power District (Cooper Nuclear Station); Exemption

I

The Nebraska Public Power District (NPPD/the licensee) is the holder of Facility Operating License No. DPR–46 which authorizes NPPD to operate the Cooper Nuclear Station at power levels not in excess of 2381 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Nemaha County, Nebraska. The license provides, among other things, that it is subject to all Rules, Regulations and Orders of the Commission now or hereafter in effect.

II

On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. Section 50.48 requires that licensed operating reactors be subject to the requirements of Appendix R to 10 CFR Part 50. Appendix R contains the general and specific requirements for fire protection programs. This rule requires all licensees of plants licensed prior to January 1, 1979, to submit: (1) Plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capability pursuant to Paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provision of § 50.48(c)(6) is to be invoked.

The licensee responded to these requirements by letter dated June 28, 1982, as supplemented and amended by letters dated March 18, 1983, and June 2, 1983. In these letters, the licensee requested certain exemptions from the requirements of Section III.G of Appendix R. Section III.G requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be kept free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a three-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than twenty feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a one hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, Section III.G.3 requires alternative shutdown capability independent of the fire area of concern.

III

The licensee requests exemptions from Section III.G. of Appendix R within seven plant fire areas and a general exemption for four specific areas from the requirements of Section III.G. to the extent that it requires three-hour fire rated boundaries for the separation of fire areas. In all areas evaluated for exemption, we have assumed a transient fire load typical of these type areas. If the licensee should introduce extraordinary transient fire loads, appropriate supplementary fire protection measures must be taken.

1. Service Water Intake Structure. In the service water intake structure, the licensee proposes to provide automatic suppression and detection, however, the separation of redundant pumps is less than twenty feet as specified by Section III.G. The diesel driven fire pump will be removed from the area and all cables are in conduit. Therefore, the only significant in situ combustible in the fire area is the pump motor lubricating oil. The licensee has stated that the probability of ignition of the oil is low

because the lubricating oil has a high flashpoint (approximately 450°F) and that sufficiently hot surfaces do not exist in this fire area to cause the ignition of the lube oil. We have reviewed the licensee's submittals and agree that the low probability of ignition of the lube oil in conjunction with the existing separation distance provides reasonable assurance that the proposed automatic detection and suppression systems will be activated before the redundant service water components are damaged. Therefore, we conclude that with the proposed modifications, the level of safety provided in the service water intake structure area will be equivalent to the technical requirements of Section III.G of Appendix R and therefore, the licensee's request should be granted.

2. Cable Spreading Room. This area does not meet Section III.G because twenty feet of separation free of intervening combustibles or one-hour barriers are not provided between redundant trains. Because of the physical configuration of the cables and equipment in the cable spreading room, the installation of a one-hour rated fire barrier may be difficult. Instead, the licensee has proposed the use of fire resisting barriers to enclose vertical cable risers, and additional automatic sprinklers for the protection of horizontal cables, the majority of which are routed in steel conduits and are at the ceiling level. There are also several cable trays in the area. An exposure fire is therefore most likely to involve floor level combustibles.

Based on our review of the licensee's submittals, we have determined that the combination of vertical fire barriers, additional sprinkler head coverage, and complete automatic suppression and detection provide reasonable assurance that one train of power cables in the cable spreading room will be maintined free of fire damage. Therefore, we conclude that the proposed modifictions with the existing fire protection for the cable spreading room provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R and the exemption should be granted.

3. Cable Expansion Room. This area does not meet Section III.G because twenty feet of separation free of intervening combustibles or one hour barriers are not provided between redundant trains. In the cable expansion room, the licensee has proposed extending the partial automatic sprinkler system to cover the entire room. Because it is difficult to install a one-hour barrier around the power cables, the licensee proposes to install flame impingement baffles beneath the conduit bank containing the power cables. Based on our review of the licensee's submittals, we have determined that because of the low fuel load in the area, and the automatic suppression and detection provided, the alternative fire protection proposed provides reasonable assurance that one train of power cables will be maintained free of fire damage. Therefore, we conclude that the proposed modifications with the existing fire protection for the cable expansion room provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R, and the exemption should be granted.

4. Reactor Building, Northeast Corner Room. This area does not comply with Section III.G because redundant conduits are not provided with one-hour rated fire barriers, and the automatic suppression system does not protect the entire area. The cables that need to be protected are installed over twenty feet above the floor level, within a highly congested conduit bank.

There is a partial, automatic sprinkler system installed in the area where the conduits are routed. The sprinkler heads are located beneath the lowest layer of conduits. Based on our review of the licensee's submittals we have determined that due to the configuration of redundant cables, and their height above the floor, the existing automatic suppression and detection equipment provides reasonable assurance that one train will be maintained free of fire damage.

Therefore, we conclude that the existing protection provided for the northeast corner room of the reactor building provides a level of fire protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

5. Control Building Basement. This area does not comply with Section III.G because an automatic suppression system is not provided. The primary cumbustible material in the area is lubricating oil. The licensee has stated that the probability of ignition of the oil is low because the lubricating oil has a high flashpoint (approximately 450°F) and that sufficiently hot surfaces do not exist in this fire area to cause the ignition of the lube oil.

The licensee has committed to protect one train of the 4160 volt power feeds to the service water pumps up to the ceiling or to a point very near the ceiling where interferences preclude protection. One division will be boxed out from the south wall in a one-hour fire barrier utilizing fire barrier material. The licensee has also committed to protect one train of the 125 volt power feeds to the diesel generator control circuitry with a one-hour barrier. Based on our review we agree with the licensee that the low probability of ignition of the lube oil in conjunction with the proposed one-hour barrier and high ceiling provides reasonable assurance that one train of power cables will be maintained free of fire damage for the time interval needed for the fire brigade to respond and manually extinguish the fire.

We therefore conclude that the proposed modifications with the existing fire protection for the control building basement provides a level of fire protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

6. Auxiliary Relay Room. This area does not comply with Section III.G because a fixed suppression system is not provided.

An alternate shutdown system is provided for those systems necessary to maintain safe shutdown capability which is independent of the auxiliary relay room. For areas where alternate shutdown capability is provided, Section III.G requires a fixed suppression system in the fire area of concern if it contains a large concentration of cables or other combustibles. However, since the auxiliary relay room contains primarily metal cabinets, cables in conduits, and cable trays, the combustible loading is low. The area is also provided with an early warning smoke detection system.

Based on our review, we agree with the licensee that a fire in this area would be of limited severity and duration and therefore the installation of a fixed suppression system would not greatly enhance the fire protection for safe shutdown capability.

We therefore conclude the existing protection provided for the auxiliary relay room provides a level of fire protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

7. Control Room. This area does not comply with Section III.G3, because the control room is not provided with fixed suppression.

The control room is equipped with area fire detectors, and is provided with both a hose station and fire extinguishers for manual fire fighting. The fire load in the area is low. In addition, an alternate shutdown system is provided with control capabilities for those systems necessary to maintain safe-shutdown capability which is

independent of the main control room. The fire protection features currently installed in the control room and the continuous manning of the control room provided adequate defense-in-depth fire fighting capability for these areas.

Since plant Technical Specifications require continuous occupancy of the control room by the operators and because the operators constitute a continuous fire watch, manual fire suppression in event of a fire would be prompt and effective. Therefore, we have determined that a fixed suppression system will not enhance the fire protection in this area.

We have therefore concluded that the existing fire protection program for the control room provides a level of fire protection equivalent to the technical requirements of Section III.G.3 and the exemption should be granted.

8. *Fire Area Boundaries.* The licensee has requested an exemption from our requirements to provide a three-hour rated barrier at fire area boundaries for the following four specific areas.

8.a Reactor Building 932' Elevation-Critical Switchgear Rooms 1F and 1G. These areas do not meet Section III.G because three-hour rated fire dampers are not provided in the HVAC ducts where they penetrate three-hour rated fire walls. The license has provided 1½-hour rated dampers in the ductwork, and has committed to upgrade one electrical buss duct penetration through the east wall of Critical Switchgear Room 1G and through the common wall between the two switchgear rooms to a three-hour rating.

Because of the low combustible loading exposing the barriers, and the automatic detection system, we have determined that the existing dampers provide reasonable assurance that one train of critical switchgear will be maintained free of fire damage in the interval required for the fire brigade to respond and manually extinguish the fire. We have therefore concluded that with the commitment to upgrade the penetration seal to three hours the protection provided for 1F and 1G critical switchgear rooms now provides a level of protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

8.b Reactor Building 931' Elevation. This area does not comply with Section III.G because redundant reactor vessel level and pressure instrument racks and cables are not separated by three-hour barriers, or provided with twenty feet of separation free of intervening combustibles combined with automatic suppression and detection, and there is not alternate shutdown capability independent of the area.

However, because of the wide separation of these instrument racks, low in-situ fuel loading, and installed detection systems, we have determined the probability is low that an exposure fire of sufficient magnitude of damage redundant trains could occur prior to response of the fire brigade.

We have therefore concluded that the protection provided for the reactor vessel level and pressure instrument racks in the Reactor Building at the 931' elevation provides a level of fire protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

8.c Reactor Building 903' Elevation (Excluding Northeast Corner). This area, which contains redundant Division I and Division II safe shutdown equipment and cables in conduit, does not comply with Section III.G because redundant cables and equipment are not separated by three-hour barriers, or provided with twenty feet of separation free of intervening combustibles combined with automatic suppression and detection, and there is not alternate shutdown capability independent of the area. However, all redundant components are separated by greater than seventy five feet.

Because of the wide separation of this equipment, low in-situ fuel loading, and installed detection systems, we have determined the probability is low that an exposure fire of sufficient magnitude to damage redundant trains could occur prior to response of the fire brigade.

We have therefore concluded that the protection provided for the 903' elevation of the reactor building provides a level of fire protection equivalent to the technical requirements of Section III.G and the exemption should be granted.

8.d Reactor Building 859' and 881' Elevations—Quadrants and Torus Area. This area does not comply with Section III.G because redundant Division I and Division II cables and equipment are not separated by three-hour barriers, or provided with twenty feet of separation free of intervening combustibles combined with automatic suppression and detection, and there is not alternate shutdown capability independent of the area. However, all redundant Division I and Division II components are separated by greater than seventy five feet with intervening walls. Because of the wide separation of this equipment and cables, low in-situ fuel loading, and installed detection systems, the staff has determined the probability is low that an exposure fire of sufficient magnitude to damage redundant trains could occur prior to response of the fire brigade. We have therefore concluded the protection provided for the Division I and Division II cables and equipment located in the Reactor Building at the 859' and 881' elevations provides a level of fire protection eqivalent to the technical requirements of Section III.G and the exemption should be granted.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemptions requested by licensee's letters as referenced in Section II and discussed in Section III above are authorized by law, will not endanger life or property or the common defense and security, are otherwise in the public interest and are hereby granted. The NRC staff had determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 21st day of September 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-26484 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Granting of Relief From ASME Code Section XI Inservice Inspection Requirements

The U.S. Nuclear Regulatory Commission (the Commission), has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Niagara Mohawk Power Corporation (the licensee). The relief relates to the inservice inspection program for the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The ASME Code requirements are incorporated by reference into the Commission's regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

The action provides relief from performing certain inspections as required by the ASME Code, Section XI that are impractical because of the facility design. Alternative inspections and testing will be performed where practicable.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made

appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying Safety Evaluation.

The Commission has determined that the granting of this relief will not result in any significant environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this relief.

For further details with respect to this action see: (1) The application for relief dated May 2, 1980; (2) the Commission's letter dated September 19, 1983; and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the State University College at Oswego, Penfield Library Documents, Oswego, New York 13126. A copy of Items (2) and (3) may be obtained upon request addresssed to the U.S. Nuclear Regulatory Commission, Wahington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 19th day of September 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-26485 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co. (Monticello Nuclear Generating Plant); Exemption

I

The Northern States Power Company (NSP/licensee) is the holder of Facility Operating License No. DPR-22 (the license) which authorizes operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota, at steady state reactor core power levels not in excess of 1670 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50, regarding fire protection features of nuclear power plants. The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) establishes the schedules for satisfying the provisions of Appendix R.

Section 50.48(c)(2) of 10 CFR Part 50 requires that those fire protection modifications that do not require prior NRC approval or plant shutdown shall be implemented within nine months after the effective date of 10 CFR 50.48 and Appendix R (February 17, 1981). Our May 4, 1982 Exemption extended the date from which 10 CFR 50.48(c)(2) installation schedules are calculated for Monticello to June 1, 1982.

Similarly, 10 CFR 50.48(c)(3) requires that those fire protection modifications requiring plant shutdown, but not requiring NRC approval, be implemented before startup after the earliest of the following events commencing 180 days or more after the effective date of the fire protection rule:

1. The first refueling outage;
2. Another planned outage that lasts for at least 60 days; or
3. An unplanned outage that lasts for at least 120 days.

Our May 4, 1982 Exemption extended the date from which 10 CFR 50.48(c)(3) installation schedules are calculated, for Monticello, to June 1, 1982.

By letter dated June 30, 1982, the licensee requested schedular exemptions from certain implementation dates of the fire protection rule. Specifically, the licensee requested schedular exemptions from the implementation dates set forth in 10 CFR 50.48 (c)(2) and (c)(3), as modified by our earlier Exemption dated May 4, 1982. By letter dated February 8, 1983, the licensee provided justification for this request. In an April 22, 1983 letter, the licensee provided additional justification by describing the responsible efforts being made to ensure that the new schedule will be met. In the submittals, the licensee requested that:

1. The 10 CFR 50.48(c)(2) implementation schedule be further extended from March 1, 1983, to December 1, 1983; and
2. The 10 CFR 50.48(c)(3) implementation schedule be further extended from before startup after the first refueling or extended outage commencing 180 days or more after June 1, 1982 (presently scheduled for June 1984) to before a startup after the first refueling outage commencing in 1985 (Cycle 12 is presently scheduled for December 1985).

III

Before Appendix R became effective, the Monticello Nuclear Generating Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed the resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. BTP 9.5-1 is broader in scope than Appendix R, forms the nucleus of the criteria developed further in Appendix R and in its present, revised form, constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses for new plants. The NRC staff reviewed Monticello fire protection capability and issued a Fire Protection Safety Evaluation Report (FPSER). The FPSER and its supplement supported the issuance of amendment number 1 to the Facility Operating License NO. DPR-22 on February 12, 1981 and required that modifications be made to the plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, Monticello has been upgraded to a high degree of fire protection already, and the extensive modifications involved in this request for additional time is to incorporate the differences between what was previously approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50. Modifications remaining to bring Monticello into conformance with Section III.G fall into three basic categories:

(1) Upgrade of fire barriers;

(2) Upgrade of structural steel to a three-hour rating; and

(3) Safe shutdown equipment/cable modifications.

In the June 30, 1982 letter, the licensee proposed and committed to these modifications. In the letter dated February 8, 1983, the licensee presented a schedule of the work that needs to be completed. When generating this schedule, the licensee took into account its limited resources and considered the following items:

(1) Impact of the modifications of the plant while it is operating;

(2) Impact of the length of time that the Technical Specifications will allow safety systems to be out of service;

(3) Impact on scheduled outages;

(4) Impact of operator training for modifications; and

(5) Procurement time for materials.

The procurement times for safety grade components have extensive lead times. For example, the ECCS cable reroute modification having the largest impact on the plant affects some 240 cables. Redundant ECCS control relays are located in the cable spreading room. Reroute of the applicable cables requires the installation of a relay panel outside the cable spreading room to

house these control function relays. This relay panel has a lead time of approximatley 12 months once the contract has been awarded. Before awarding the contract however, all conceptual designs and specifications must be completed. This will require eight to ten months. Provision has already been made for the location of this panel and its cabling in the reactor building addition currently under construction. A tunnel for cable runs and a missile shield adjacent to the turbine building will be installed in this new building.

The effect of interdependence of other work has been considered by the licensee. This work will include replacing recirculation riser piping, retubing the main condenser, replacing turbine rotors, and replacing the RWCU heat exchangers. In addition, normal refueling activities will contribute to coordination problems along with ongoing projects such as the SRV low-low set modification, hydrogen recombiner installation, and torus attached piping modifications. Congestion of backfit modifications was a prime contributor to a recent reportable occurrence concerning a violation of primary containment involving newly installed containment penetration piping and valves for the hydrogen recombiners. There are other practical constraints in attempting to accelerate this schedule. One problem is the number of people that can be properly supervised, and similarly, the number of people that can actually work in a confined area. Increasing the labor force beyond a practical level will result in reduced efficiency and inadequate coordination of activities leading to safety problems.

Constraints exist on the amount of work that can safely be undertaken at any given time. Although the next outage may last up to six months, only a limited amount of cable reroute work can effectively be accomplished. In the April 22, 1983 letter, the lecensee described its efforts to remain punctual by planning to start construction activities this summer for laying underground ductbanks in anticipation of staying ahead of the cable rerouting deadlines. Although this work is expected to start this summer, its completion is outage dependent since the plant must be shut down in order to breach secondary containment to finish installation of the cable ductbank. Once this is accomplished, the pulling of some 240 cables, properly tagged and identified, can begin.

The ductbank and cable installation is being done in parallel with the design, specification, fabrication and installation of the relay panel where the rerouted safe shutdown cables will terminate. Because of the high sensitivity and long lead times associated with this equipment, the alternate relay panel cannot be delivered until well after the 1984 refueling outage. However, to ensure timely completion of the cable reroute, the relay panel and its associated cables will be in place at least three months before the 1985 refueling outage. This will allow adequate time for planning and coordinating the transfer of control functions in the cable spreading room to the alternate relay panel. This effort will minimize the delays in conducting the required cable wiring and testing prior to startup.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Monticello in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for a strict conformance with Section III.G. We find that because of the already completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of these modifications. Therefore, an Exemption should be granted to allow such time for completion.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest, and hereby grants the following exemptions with respect to the schedular requirements of § 50.48 of 10 CFR:

(1) The implementation date in paragraph (c)(2) for the installation of modifications required by Appendix R, Section III.G.2 that does not require prior NRC approval or plant shutdown is extended from nine months after June 1, 1982, to December 1, 1983; and

(2) The implementation date in paragraph (c)(3) for the installation of modifications required by Appendix R, Section III.G.2 that does not require prior NRC approval but requires plant shutdown is extended from before startup after the first refueling or extended outage commencing 180 days or more after June 1, 1982, to before startup of Cycle 12.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 21st day of September 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-26480 Filed 9-27-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 23, 1983 (48 FR 38359). Individual authorities established or revoked under Schedules A, B, or C between August 1, 1983 and August 31, 1983 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Department of the Army

Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Libraries series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany. Effective August 9, 1983.

Federal Emergency Management Agency

Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. No one may be employed under this authority for more than 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority. Effective August 17, 1983.

Schedule B

The following exceptions are established:

U.S. Arms Control and Disarmament Agency

Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years. Effective August 1, 1983.

National Endowment for the Humanities

One Humanist Administrator, (Assistant Director), Central Disciplines in Undergraduate Education Program. Effective August 18, 1983.

One Humanist Administrator, (Assistant Director), Exemplary Projects, Nontraditional Learners, and Teaching Materials Program. Effective August 18, 1983.

One Humanist Administrator, Central Disciplines in Undergraduate Education Program. Effective August 18, 1983.

Humanist Administrator,

Two Humanist Administrators, Exemplary Projects, Nontraditional Learners, and Teaching Materials Program. Effective August 18, 1983.

The Following exceptions are revoked:

National Endowment for the Humanities

One Assistant Director, Higher Education Projects Program, Division of Education Programs. Effective August 18, 1983.

One Assistant Director for Institutional Grants Program, Division of Education Programs. Effective August 18, 1983.

Scientific C

The following exceptions are established.

Department of Agriculture

One Private Secretary to the Deputy Assistant Secretary for Administration, Office of the Secretary. Effective Augsut 4, 1983.

One Assistant to the Administrator, Rural Electrification Administration. Effective August 4, 1983.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective August 8, 1983.

One Staff Assistant to the Special Assistant to the Secretary. Effective August 10, 1983.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective August 12, 1983.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective August 15, 1983.

One Confidential Assistant to the Secretary. Effective August 22, 1983.

One Staff Assistant (Typing) to the Administrator, Agricultural Marketing Service. Effective August 23, 1983.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective August 23, 1983.

One Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services. Effective August 23, 1983.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective August 23, 1983.

One Private Secretary to the Director, Office of Rural Development Policy. Effective August 23, 1983.

One Confidential Assistant to the Secretary. Effective August 26, 1983.

One Private Secretary to the Assistant Secretary for Science and Education. Effective August 29, 1983.

Department of Commerce

One Confidential Assistant to the Director General, U.S. and Foreign Commercial Services, International Trade Administration. Effective August 1, 1983.

One Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective August 8, 1983.

One Confidential Assistant to the Deputy Assistant Secretary for Export Enforcement. Effective August 11, 1983.

One Executive Assistant to the Assistant Secretary for Trade Administration, International Trade Administration. Effective August 15, 1983.

One Confidential Assistant to the Director, Office of Policy and Planning, National Oceanic and Atmospheric Administration. Effective August 23, 1983.

One Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration. Effective August 23, 1983.

Department of Defense

One Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary (European and NATO Policy), Office of the Under Secretary of Defense for Policy. Effective August 4, 1983.

One Special Assistant to the Deputy Assistant Secretary of Defense for East Asia and Pacific Affairs, Office of the Assistant Secretary of Defense (International Security Affairs). Effective August 23, 1983.

One Personal Secretary to the Deputy Secretary of Defense. Effective August 31, 1983.

One Private Secretary to the Assistant Secretary of Defense (International Security Affairs). Effective August 31, 1983.

Department of Education

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective August 3, 1983.

One Confidential Assistant to the Counsellor/Executive Assistant to the Secretary, Office of the Secretary. Effective August 3, 1983.

One Special Assistant to the Assistant Secretary, Office of Legislation and Public Affairs. Effective August 3, 1983.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 5, 1983.

One Secretary's Regional Representative to Under Secretary, Boston, Massachusetts, Office of the Under Secretary. Effective August 12, 1983.

Department of Energy

One Advisor to the Member of the Federal Energy Regulatory Commission. Effective August 4, 1983.

One Special Assistant to the Director, Minority Economic Impact. Effective August 16, 1983.

One Secretary (Confidential Assistant) to the Executive Assistant to

the Secretary, Office of the Secretary. Effective August 16, 1983.

Department of Health and Human Services

One Special Assistant to the Director, Office of Program Coordination and Review. Effective August 1, 1983.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs. Effective August 3, 1983.

One Director of Organization Liaison, Office of Consumer Affairs. Effective August 3, 1983.

One Confidential Assistant to the Under Secretary. Effective August 4, 1983.

One Confidential Executive Assistant to the Assistant Secretary for Public Affairs. Effective August 22, 1983.

One Special Assistant to the Senior Advisor to the Secretary, Office of the Secretary. Effective August 22, 1983.

One Confidential Staff Assistant to the Executive Secretary, Office of the Secretary. Effective August 22, 1983.

One Special Assistant to the Associate Commissioner, Office of Developmental Services. Effective August 29, 1983.

Department of Housing and Urban Development

One Executive Assistant to the Deputy Assistant Secretary for Public Housing and Indian Programs, Office of Housing-Federal Housing Commissioner. Effective August 4, 1983.

One Special Assistant to the Assistant to the Secretary for Labor Relations. Effective August 9, 1983.

One Special Assistant to the Manager, Solar Energy and Energy Conservation Bank. Effective August 15, 1983.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective August 22, 1983.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations. Effective August 22, 1983.

One Special Assistant to the Secretary. Effective August 25, 1983.

One Special Assistant to the Assistant Secretary for Housing, Office of Housing—Federal Housing Commissioner. Effective August 31, 1983.

Department of the Interior

One Congressional Liaison Officer to the Director, Bureau of Mines. Effective August 4, 1983.

One Staff Assistant to the Assistant to the Director for Royalty Management, Minerals Management Service. Effective August 4, 1983.

One Special Assistant to the Assistant Secretary for Energy and Minerals. Effective August 5, 1983.

One Public Affairs Specialist to the Deputy Director, Minerals Management Service. Effective August 15, 1983.

One Special Assistant to the Secretary. Effective August 16, 1983.

One Special Assistant to the Assistant Secretary for Territorial and International Affairs. Effective August 17, 1983.

One Special Assistant to the Director, Bureau of Mines. Effective August 23, 1983.

Department of Justice

One Special Assistant to the Attorney General, Offices, Boards and Divisions. Effective August 4, 1983.

One Deputy Assistant Attorney General to the Assistant Attorney General, Antitrust Division. Effective August 8, 1983.

One Staff Assistant to the Director of Public Affairs, Offices, Boards and Divisions. Effective August 31, 1983.

One Staff Assistant to the Commissioner, Immigration and Naturalization Service. Effective August 31, 1983.

Department of Labor

One Confidential Staff Assistant to the Assistant Secretary for Employment and Training. Effective August 3, 1983.

One Staff Assistant to the Deputy Under Secretary for International Affairs. Effective August 4, 1983.

Department of State

One Staff Assistant to the Under Secretary for Political Affairs. Effective August 8, 1983.

One Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs. Effective August 16, 1983.

One Special Assistant to the Ambassador, U.S. Representative, Organization of American States. Effective August 24, 1983.

One Special Assistant to the Assistant Secretary for Inter-American Affairs. Effective August 31, 1983.

Department of Transportation

One Program Assistant to the Special Assistant to the Administrator, Federal Railroad Administration. Effective August 1, 1983.

One Assistant Director for Policy to the Director for Executive Secretariat. Effective August 3, 1983.

One Staff Assistant to the Director of Congressional Affairs, Office of the Secretary. Effective August 5, 1983.

One Special Assistant to the Director, Office of Civil Rights. Effective August 23, 1983.

One Staff Assistant to the Maritime Administrator, Office of the Administrator. Effective August 31, 1983.

Department of the Treasury

One Staff Assistant to the Commissioner of Customs, U.S. Customs Service. Effective August 22, 1983.

One Staff Assistant (Typing) to the Senior Deputy Comptroller for National Operations. Effective August 26, 1983.

ACTION

One Special Assistant to the Director. Effective August 5, 1983.

One Deputy Associate Director, VISTA/SL, to the Associate Director, Domestic and Anti-Poverty Operations. Effective August 12, 1983.

One Special Assistant to the Associate Director, Office of Domestic and Anti-Poverty Operations. Effective August 29, 1983.

Administrative Conference of the U.S.

One Confidential Assistant to the Chairman. Effective August 23, 1983.

Agency for International Development

One Confidential Assistant to the Associate Deputy Administrator, Office of External Relations. Effective August 22, 1983.

One Congressional Liaison Officer to the Director, Office of Legislative Affairs. Effective August 25, 1983.

Environmental Protection Agency

One Staff Assistant to the Assistant Administrator, Office of Administration. Effective August 3, 1983.

One Special Assistant to the Administrator, Office of the Administrator. Effective August 16, 1983.

One Confidential Assistant to the Associate Administrator for Regional Operations. Effective August 22, 1983.

Export-Import Bank of the United States

One Special Assistant to the President and Chairman. Effective August 3, 1983.

Federal Emergency Management Agency

One Special Assistant to the Associate Director, National Preparedness Programs. Effective August 8, 1983.

Federal Labor Relations Authority

One Staff Assistant (Stenography) to the Chairman. Effective August 1, 1983.

General Services Administration

One Special Assistant to the Regional Administrator for Planning and Evaluation in Boston, Massachusetts. Effective August 12, 1983.

One Special Assistant to the Director of Communications, Office of

Communications. Effective August 15, 1983.

International Trade Commission

One Confidential Assistant to the Chairman, Office of the Chairman. Effective August 19, 1983.

National Endowment for the Arts

One Congressional Liaison Officer to the Chairman. Effective August 1, 1983.

President's Commission on Executive Exchange

One Confidential Assistant to the Executive Director. Effective August 12, 1983.

Small Business Administration

One Director, Executive Secretariat, Office of the Administrator. Effective August 23, 1983.

One Staff Assistant to the Administrator, Office of the Administrator. Effective August 23, 1983.

One Confidential Assistant to the Director of Women's Business Ownership. Effective August 31, 1983.

United States Tax Court

One Secretary (Confidential Assistant) to the Judge. Effective August 1, 1983.

One Secretary (Confidential Assistant) to the Judge. Effective August 8, 1983.

U.S. Information Agency

One Special Assistant to the Deputy Director, Office of the Deputy Director. Effective August 4, 1983.

One Special Assistant to the Director, Office of Research, Bureau of Programs. Effective August 4, 1983.

One Special Projects Officer to the Associate Director for Broadcasting. Effective August 8, 1983.

One Special Assistant (Tsukuba Exposition) to the Commissioner General. Effective August 12, 1983.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Public Affairs. Effective August 31, 1983.

Office of Personnel Management

Donald J. Devine,

Director

[FR Doc. 83-26396 Filed 9-27-83; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-6485]

Action Industries, Inc., 9% Convertible Subordinated Debentures (Due 1998); Application To Withdraw From Listing and Registration

September 22, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Action Industries, Inc. ("Company") has determined to reduce the conversion price of its debentures. Amex's listing requirements provide that a company may not voluntarily adjust the conversion price of its debentures. In this regard, the Company has requested that its debentures be removed from listing and registration on the Amex. The Amex has posed no objection to this matter.

Any interested person may, on or before October 14, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26473 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20216; File No. 57-433]

Approval of Amendments to the CTA Plan

September 22, 1983.

I. Background and Description of Amendments

On June 27, 1983, the participants in the Consolidated Tape Association ("CTA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), two amendments to the Restated and Amended Plan ("CTA Plan").[1] The first amendment enabled subscribers to securities information provided by the CTA to install interrogation devices and ticker displays in locations accessible to the general public. These locations would include building lobbies, restaurants, and transportation terminals. The second amendment would permit the CTA administrators to waive subscriber fees for those participating in programs testing new CTA services.

On July 18, 1983, the Commission granted the first amendment summary effectiveness, ordered that the amendment take effect for a period of 60 days upon publication of notice thereof in the **Federal Register**, and solicited comment on whether to approve permanently the amendment. In addition, the Commission solicited comment on whether to approve the second amendment.[2]

II. Approval of Amendments

The Commission received no response to its solicitation of comments. In regard to the first amendment, because the Commission believes that allowing installation of display devices in controlled public locations broadens the public's access to current market information, consistent with the statutory goal of ensuring the "availability to brokers, dealers, and investors of information with respect to . . . transactions in securities" expressed in Section 11A(a)(1) of the Act, the Commission finds that approval of this amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

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[1] *See* Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

[2] *See* Securities Exchange Act Release No. 19947 (July 6, 1983), 48 FR 32247.

The Commission believes that approval of the second amendment will foster effective testing of new equipment and services utilizing CTA information, which will assure the introduction of useful services at the earliest possible date. Accordingly, the Commission finds that approval of the second amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

In accordance with the above, it is ordered, pursuant to Section 11A of the Act, and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that both amendments to the CTA Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[3]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26471 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13523; (812-5624)]

Lawrence B. Buttenwieser and General American Investors Co., Inc.; Application for an Order

Notice is hereby given that General American Investors Company, Inc. (the "Company"), 330 Madison Avenue, New York, New York 10017, a closed-end, internally managed investment company registered under the Investment Company Act of 1940 ("Act"), and Lawrence B. Buttenwieser, a director of the Company (collectively, "Applicants"), filed an application on August 2, 1983, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder to permit an arrangement whereby the Company and a family trust in which Mr. Buttenwieser has a beneficial interest and of which he may be a trustee (the "Trust") will invest contemporaneously in Warburg, Pincus Capital Partners, L.P. (the "Partnership"), a venture capital limited partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of relevant provisions.

According to the application, the Company is a closed-end investment company registered since 1940 under the Act and is also an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). In addition, the Company is the sole stockholder of General American Advisers, Inc. ("Advisers"), which is also an investment adviser registered under the Advisers Act. The assets of the Company as well as the accounts managed by the Company and Advisers are invested primarily in equity securities.

According to the application, the Trust was created under the will of Mr. Buttenwieser's grandmother and is primarily for the benefit of his mother, Mr. Buttenwieser has been a director of the Company since 1967. Mr. Buttenwieser's mother is still alive.

Applicants state that the Partnership is offering limited partnership interests to investors with the intention of raising a total of $250 million. The General Partner of the Partnership will be Warburg, Pincus & Co. ("General Partner"). The manager of the Partnership will be E.M. Warburg, Pincus & Co., Inc. ("Manager"), which is owned by Warburg, Pincus & Co. The Partnership will make venture capital and related investments. Applicants also state that limited partnership interests are being offered in reliance upon the exemption from registration in Section 4(2) of the Securities Act of 1933. Applicants assert that as a result both of the private placement nature of the offering of limited partnership interests and the requirements of the Internal Revenue Code relating to partnerships, limited partnership interests are not generally transferable without the written consent of the General Partner.

Applicants state that if the order requested by Applicants is granted by the Commission, the Company and the Trust will invest contemporaneously in the Partnership. Pursuant to the proposed arrangement, the Company intends to purchase $2,000,000 and the Trust $1,000,000 of limited partnership interests. Applicants acknowledge Mr. Buttenwieser is an affiliated person of the Company and, if the Trust is a trust of which Mr. Buttenwieser is a trustee, the Trust would be an affiliated person of Mr. Buttenwieser if Mr. Buttenwieser were deemed to control the Trust.

Applicants further acknowledge that, because of the relationship between Mr. Buttenwieser and the Trust, the contemporaneous investment by the Trust and the Company in the Partnership might be considered a participation by the Company and an affiliated person of an affiliated person in a joint enterprise or arrangement in contravention of Section 17(d) and Rule 17d–1 thereunder unless authorized by order of the Commission.

Applicants state that both the Company and the Trust would be joining the Partnership as limited partners. Applicants assert that the terms of their respective participations in the Partnership are on a basis identical to that of all other limited partners. Applicants state that neither the limited partners, including the Trust and the Company, nor Mr. Buttenwieser will take part in the management or control of the Partnership's business, and will have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in the Limited Partnership Agreement.

Applicants represent that the General Partner will select an Advisory Committee consisting of representatives of the limited partners who are unaffiliated with the Manager to consult with and advise the General Partner with respect to the business of the Partnership. Mr. Buttenwieser undertakes: (1) That neither he nor any representative of the Trust will accept a position on the Advisory Committee unless and only so long as a representative of the Company holds such a position; (2) that he will not participate in the deliberations of the board of directors of the Company relating to its investments in the Partnership; (3) that, so long as the Company is a limited partner of the Partnership and in the event the Trust acquiring the interest in the Partnership is a trust of which Mr. Buttenwieser is a trustee, (a) he will consult in advance with the board of directors of the Company with respect to any proposed disposition of the Trust's interest in the Partnership and (b) he will give to the staff of the Commission at least 20 days notice of such disposition, except that no such consultation or notice will be required with respect to a testamentary disposition, a disposition by operation of law or a termination of the Trust by its terms.

Applicants further state that the General Partner will also select a Valuation Committee. The majority of the Valuation Committee will be members of the Advisory Committee who are representatives of the limited partners, and the remaining members of the Valuation Committee will be officers of the Manager. However, according to the application, it is the General Partner which possesses the ultimate decision-making authority with respect to the Partnership's activities.

According to the application, profits of the Partnership will not be reinvested; as a result, the Partnership intends to make periodic distributions of cash or securities to the Partners. Applicants represent that net profits ("Net Profits") is defined in the Limited Partnership Agreement as the net income of the Partnership for any period from all sources whatsoever determined in accordance with generally accepted accounting principles. At any time that Partners' capital accounts are less than

[3] 17 CFR 200.30–3(a)(29).

contributions minus distributions thereof, all Net Profits will be allocated in proportion to such deficit. When the Partners' capital accounts are again equal to contributions minus distributions thereof Net Profits will be allocated in such a manner that cumulatively the limited partners will receive 80 percent and the General Partner will receive 20 percent. The Partnership will have a twelve-year life, which will be extendable by the General Partner for an additional two years.

The Company states that its investment is in the best interests of the Company and its shareholders and is consistent with the policies and purposes of the Act. Further, Applicants assert that the participation of the Company in the Partnership is on the same terms and therefore on a basis no less advantageous than that of other participants.

According to the application, the terms of the Limited Partnership Agreement apply equally to the Company and the Trust. Applicants assert that to the extent that differences do exist in the relative rights and obligations of limited partners, Applicants assert that such differences represent an equitable allocation of the benefits and risks among the participants in light of their respective economic contribution is twice that of the Trust's, its rights and obligations are greater in and of themselves.

According to the application, the decision to invest in the Partnership and the determination of the amount of the Company's contribution were made by the Company's officers in the best interests of its shareholders and without regard to the concurrent investment by Mr. Buttenwieser.

The Company also represents that, whether or not the Trust makes its $1,000,000 investment in the Partnership, it would propose only to invest $2,000,000. As a result, the Trust's participation in this offering does not disadvantage the Company's opportunity to invest in the Partnership or affect the amount of the Company's participation.

Applicants also assert that the Company's decision to invest $2,000,000 in the Partnership is consistent with the Company's primary objective—to make investments that will result in long-term capital appreciation. Further, Applicants state that investment in a venture capital limited partnership enhances the Company's exposure to ventures which may at some future date be potential investments for the Company. According to the application, the Company strongly believes that its investment in a carefully chosen venture capital limited partnership is in the best interests of both the Company and its shareholders.

Applicants represent that the proposed contemporaneous investments to be effected by the Applicants meets the standards for exemption of both Section 17(d) and Rule 17d–1. For all of the reasons stated above, Applicants therefore request that the Commission enter an order pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting the proposed contemporaneous investments to be effected by the Applicants.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 11, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26479 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13519 (812–5597)]

Metropolitan Tower Life Insurance Co. and Metropolitan Tower Separate Account One; Application for an Order

September 21, 1983.

Notice is hereby given that Metropolitan Tower Life Insurance Company ("Metropolitan") and Metropolitan Tower Separate Account One (the "Account"), One Madison Avenue, New York, New York 10018, a registered unit investment trust, filed an application on July 11, 1983, as amended on September 13, 1983, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting certain exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants propose to offer certain variable life insurance policies funded by the Account. The Account, in turn, currently invests in the shares of the portfolios of Metropolitan Series Fund, Inc. ("Fund"), a management investment company the shares of which also will be available to separate accounts offering variable annuity contracts. Applicants represent that they are requesting relief because it is arguable that the exemptive relief provided by Rule 6e–2(b)(15) under the Act from Section 9(a), and thus from Sections 13(a), 15(a), and 15(b), would not be available to Applicants if, in addition to the Account, variable annuity separate accounts invest in the Fund. In this regard, Applicants point out that Rule 6e–2(b)(15) requires that in order to rely on the relief therein, the assets of any variable life separate account must consist of shares of one or more management investment companies which offer their shares "exclusively" to such separate accounts, *i.e.*, Rule 6e–2(b)(15) may not contemplate "mixed funding" of variable life policies and variable annuity contracts from the same underlying management investment companies. Applicants represent that granting the requested relief will not compromise the regulatory goals of the above-noted provisions and will result in significant cost savings to investors.

Applicants state that in order to address any concerns that might arise from mixed funding, and as support for their requested relief pursuant to Section 6(c), they consent to the conditions set forth in the application, which include, *inter alia*, the Board of Directors of the Fund ("Board"), constituted with a majority of disinterested directors, will monitor the Fund for the existence of any irreconcilable material conflict between the interests of variable life policyholders and variable annuity contractowners investing in the Fund and will take appropriate action if any such conflict should arise; Metropolitan has obtained an opinion of tax counsel stating that mixed funding will not result in adverse federal tax consequences either to variable life policyholders or to variable annuity contractowners; Metropolitan will advise by letter the insurance department of each state where the variable life policies are to be offered that the Fund will be used for mixed funding and will resolve any state

insurance department's objections to mixed funding prior to offering the policies in that state; and, the prospectuses for the Fund shall disclose that it will be used for mixed funding and certain possible consequences arising therefrom.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 14, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail on Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26474 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

September 22, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Aeroflex Laboratories, Inc.
Common Stock, $.10 Par Value (File No. 7-7093)
Diamond Shamrock Corporation
Common Stock, No Par Value (File No. 7-7094)
Avemco Corporation
Common Stock, $.01 Par Value (File No. 7-7095)
Carrols Corporation
Common Stock, $.10 Par Value (File No. 7-7096)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 14, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26472 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20218; SR-NYSE-83-32, etc.]

New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange, Inc.

September 22, 1983.

In the matter of the New York Stock Exchange, Inc., 11 Wall Street, New York, NY 10005 (SR-NYSE-83-32, SR-NYSE-83-35, SR-NYSE-83-38, SR-NYSE-83-39, SR-NYSE-83-40, SR-NYSE-83-41, SR-NYSE-83-42, SR-NYSE-83-44).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1983, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission seven of the proposed rule changes as described herein. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. The eighth proposed rule change, SR-NYSE-83-32, was submitted August 15, 1983, and previously published as noted below.

The proposed rule change contained in SR-NYSE-83-32 consists of the contract specifications for the NYSE's options on stock groups based upon the NYSE Composite Index.[1] These specifications are as follows: an index multiplier of 100; 5 point exercise price intervals; three expiration months of nine months duration, with an initial listing of November 1983, February 1984, and May 1984 options series; and expiration dates on the Saturday after the third Friday of the expiration month.

Notice of SR-NYSE-83-32 together with its terms of substance was provided by issuance of a Commission Release (Securities Exchange Act Release No. 20070, August 16, 1983) and by publication in the **Federal Register** (48 FR 38566, August 24, 1983).

The other proposed rule changes are intended to bring NYSE option trading rules into conformity with the practice of other options exchanges or otherwise to make technical adaptations of NYSE rules to NYSE options trading.

The substance of the other proposed rule changes may be summarized as follows: SR-NYSE-83-35 adds a rule requiring NYSE approval for telephone links to the Exchange floor for options trading purposes; SR-NYSE-83-38 and SR-NYSE-83-42, in accord with American Stock Exchange ("Amex") practice,[2] grant parity with off-floor orders to Competitive Options Traders liquidating positions, and grant parity with off-floor orders not on the specialist's book to options specialists; SR-NYSE-83-39 eliminates closing options rotations, except in unusual circumstances, in accord with the recently approved Amex index options rules;[3] SR-NYSE-83-40 conforms NYSE's rules on option facilitation orders to Amex Rules 950(d) and (e)(iv), providing the procedure and conditions for crossing a firm proprietary order with a customer order; SR-NYSE-83-41 sets 6:30 p.m. New York time on the last business day before expiration as the latest point at which members may prepare or accept exercise instructions absent certain exceptional circumstances; this proposal also provides for memoranda of exercises in such exceptional circumstances, for exercise advices in case of exercises of 25 or more contracts in the same series for the same account on the same day, and for other matters relating to exercise; it follows substantially a recently approved Chicago Board Options Exchange rule;[4] SR-NYSE-83-

[1] On November 22, 1982, the Commission approved five specific indices with respect to which the NYSE could commence index options trading. Securities Exchange Act Release No. 19264 (November 22, 1982); 47 FR 55981 (November 30, 1982). The Exchange has submitted this as well as the other proposed rule changes discussed below in order to enable it to commence trading in options on the NYSE Composite Index on September 23, 1983.

[2] *See* American Stock Exchange Rules and Constitution ("Amex rules"), Rules 111(d), 108 and 950; and the Amex Floor Transactions Handbook (1981-82) at 57.

[3] Amex Rules 930C and 918C; *see* Securities Exchange Act Release No. 20169 (September 9, 1983), 48 FR 41545 (September 15, 1983).

[4] Securities Exchange Act Release No. 20172 (September 12, 1983), 48 FR 42889 (September 20, 1983).

44 makes holders of NYSE options trading rights eligible to act under NYSE Rule 46 as floor officials for options trading.

Interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Reference should be made to the file numbers indicated above.

Copies of the submissions, all subsequent amendments, all written statements on the proposed rule changes filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filings and of any subsequent amendments also will be available at the principal office of the NYSE.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving all of the proposed rule changes prior to the thirtieth day after the date notice of them was published in that the proposed changes either conform NYSE option rules to the rules of other options exchanges that have already been made available for public comment, reviewed by the Commission and approved; or the changes are merely technical adaptations of longstanding NYSE rules to the requirements of options trading, and it would, therefore, not serve the public interest to delay their implementation or the commencement of NYSE options trading.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26475 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20219; SR-NYSE-83-23]

New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Amended Proposed Rule Change

September 22, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on June 24, 1983, with an amendment submitted August 19, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to revise its options trading rules to adapt them to the Commission's present options disclosure rules, revise the method for calculating position and exercise limits, conform various options and index options rules to those established by the American Stock Exchange and the Chicago Board Options Exchange, and to make various technical amendments.[1] The proposed changes are in part a revision of an NYSE rule change proposal concerning index option margins, notice of which was originally published January 4, 1983.[2]

The amendment of August 19, 1983, would reduce financial requirements for competitive options traders ("COTs") to those set by the Options Clearing Corporation ("OCC") or, in the case of a COT who is not self-clearing, would require an agreement with a clearing member meeting OCC requirements and those of Rule 15c3-1(c)(2)(x) under the Act. Certain portions of the proposed rule changes have also been superseded by subsequent rule change proposals also approved today.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19985, July 20, 1983) and by publication in the Federal Register (48 FR 34173, July 27, 1983). The amendment filed August 19, 1983, was noticed in Securities Exchange Act Release No. 20117 (August 25, 1983), 48 FR 39548 (August 31, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the amended proposed rule change before the thirtieth day after notice was given, in that, apart from the amendment of August 19, 1983, all portions of the proposal in fact have been before the public and the Commission for more than thirty days, and in that, as to that amendment, substantial time has been provided for public and Commission review; and since the amendment by its term requires simply that COTs by in compliance with OCC rules already reviewed and approved by the Commission or be guaranteed by a firm that is in compliance with such rule and the Commission's own rule 15c3-1(c)(2)(x).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26476 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20208; SR-NYSE-82-22]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 21, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on November 19, 1982, with amendments on June 24, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to revise NYSE margin rules to accommodate the trading of options on stock indices. Among other things, the proposal establishes margin for uncovered short positions in broad-

[1] In addition to those subjects specifically described above, the conforming and technical amendments address margin, exercise restrictions, opening, closing rotations, exercise cut-off ties, market makes congregation, cover, related securities, index value, liability for index value dissemination, expiration cycles, the index multipliers, exercise intervals, combination orders, capital requirements, and reporting requirements.

[2] *See* Securities Exchange Act Release No. 19396, (January 4, 1983), 48 FR 1577 (January 13, 1983), and File No. SR-NYSE-82-22.

[3] *See* Securities Exchange Act Release No. 20218 (September 22, 1983).

based [1] stock index options at the following level: (a) 100 percent of the current market value of the option, plus (b) 10 percent of the current value of the underlying index times the applicable index multiplier. The index value component may be reduced from 10 percent to as little as 2 percent to the extent that the option contract is "out-of-the-money."

Notice of the proposed rule change and its amendment, together with the terms of substance of the proposed rule change and its amendment was given by the issuance of Commission Releases (Securities Exchange Act Release Nos. 19396, January 4, 1983 and 19985, July 20, 1983) and by publication in the **Federal Register** (48 FR 1577, January 13, 1983 and 48 FR 34173, July 27, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26477 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20207; File No. SR-OCC-83-18]

Options Clearing Corp.; Order Granting Accelerated Approval of Proposed Rule Change

September 21, 1983.

On August 19, 1983, the Options Clearing Corporation ("OCC") filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, a proposed rule change that would authorize OCC to amend sections of its Restated Participant Exchange Agreement (the "Agreement") [1] With the several options exchanges ("participant exchanges").[2] Notice of the proposed rule change, together with its terms of substance, was given by publication of Securities Exchange Act Release No. 20108 (August 23, 1983), 48 FR 39327 (August 30, 1983). The Commission received no letters of comment.

The proposed rule change would amend Sections 13 and 23 of the Agreement. Under the proposal, Section 13 would require each participant exchange to notify OCC immediately by telephone when the participant exchange determines that the financial condition of an OCC clearing member is deteriorating.[3] Additionally, each participant exchange would have to keep OCC informed of the results of the exchange's financial surveillance of a troubled clearing member. The proposal would require each participant exchange to furnish to OCC copies of all written materials the exchange receives concerning a troubled clearing member's financial condition.[4] Moreover, proposed Section 13 would require participant exchanges to advise OCC by telephone of the reasons for financial surveillance committee meetings concerning clearing members, in advance of such meetings. The participant exchange also would have to notify OCC by telephone of any conclusion reached and the bases therefor.[5] Finally, a participating exchange that does not have a financial surveillance committee would agree to notify OCC of a clearing member's deteriorating financial condition immediately after any determination that such condition exists.

The proposed rule change also would amend Section 23 of the Agreement, which relates to mutual indemnification of OCC and the participant exchanges. Under proposed Section 23, OCC or a participating exchange would be indemnified by one or more of the other indemnifying parties to the Agreement, as appropriate, if it suffers a loss directly from a breach of the Agreement [6] or the Stockholder's Agreement.[7] These changes would reduce the scope of the existing indemnities under Section 23. Currently, all parties to the Agreement are indemnified reciprocally not only for losses arising from breaches of the Agreement and the Stockholder's Agreement, but also for losses arising from the parties' violations of the Act and related rules; state securities laws, fraud statutes and similar laws; or the rules of the participant exchange or OCC. With respect to losses occasioned by such violations, however, the proposal would not alter the current reciprocal indemnities when losses fall on third parties.[8]

OCC believes that the proposed rule change enhances the reporting standards of Section 13 and should improve OCC's ability to protect itself and its clearing members from unnecessary financial risk. As a corollary, OCC believes that the Agreement reduces OCC's need for broad indemnification. OCC explains that proposed Section 13 should enable OCC to receive from a participant exchange more complete information regarding the financial condition of

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[1] The NYSE rule does not by its terms limit its application to options on "broad-based" indices. The Commission has been assured, however, that the NYSE has no intention that this margin rule proposal be applicable to options on narrow-based or "industry" indices. *See* letter of September 16, 1983, from Frank J. Jones, Senior Vice President, Options and Index Products, NYSE, to Richard Chase, Assistant Director, Division of Market Regulation, File No. SR-NYSE-82-22.

[1] The Agreement covers, among other things, (i) business relationships between the options exchanges and OCC in respect of certain stated matters, (ii) reciprocal indemnification, and (iii) scope of authority reserved to OCC and the exchanges, respectively. *See* Art. VII, § 4 of OCC's By-laws.

[2] The participant exchanges are the Chicago Board Options Exchange ("CBOE"), the American Stock Exchange ("Amex"), the Philadelphia Stock Exchange ("Phlx") and the Pacific Stock Exchange ("PSE"). OCC is requesting accelerated approval by the Commission of the proposed rule change under Section 19(b)(2) of the Act to ensure that the rule change is effective before the New York Stock Exchange ("NYSE") starts its stock index options market on September 23, 1983.

[3] The agreement defines deteriorating conditions to include: (1) Member non-compliance with financial responsibility standards established by the exchange or the Commission; (2) member non-compliance with OCC's financial responsibility standards; (3) the imposition of special restrictions on the clearing member because of its financial condition; or (4) a deterioration in the clearing member's financial condition such that it should be reported to the Securities Investor Protection Corporation.

[4] The receiving exchange would need to furnish those copies to OCC by 2:00 p.m. (Chicago time) on the day after receipt of the material. OCC, however, may request that the documents be made available for pick-up contemporaneously with their receipt by the participant exchange.

[5] Currently, the Agreement only provides that each participant exchange notify OCC promptly of its determination that one of several stated circumstances exists and keep OCC reasonably informed of the results of the exchange's surveillance activities respecting clearing members.

[6] OCC would not be indemnified by a participant exchange if OCC suffers a loss caused by failure of that exchange to enforce adequately its financial responsibility standards. OCC, however, would be indemnified by the participant exchange if the exchange failed to provide OCC with the information required under proposed Section 13.

The proposal also clarifies that OCC will be deemed to suffer a loss even if the amount of the loss can be satisfied through *pro rata* assessments of OCC clearing members' contributions to OCC's Stock or Non-Equity Securities Clearing Funds. *See* Art. VIII, section 5 of OCC's By-laws.

[7] OCC is owned jointly by the options exchanges. *See* Art. VII, section 3 of OCC's By-laws. The Stockholder's Agreement memorializes that joint ownership.

[8] For example, current reciprocal indemnification provisions would apply if a participating exchange member sued the exchange and OCC in connection with losses suffered from the negligence of OCC or the exchange.

troubled clearing members on a more timely basis. By receiving detailed information on a clearing member's financial status, OCC believes that it will be better able to take prompt, effective action to protect itself and its clearing members against financial exposure.[9] In addition, because the proposal increases the likelihood that OCC can act effectively on financial information provided by participant exchanges, OCC believes that broad indemnification is no longer appropriate. The exchanges will continue their effective financial surveillance programs pursuant to their self-regulatory responsibilities under the Act. Also, the Agreement's unchanged indemnity provisions regarding liability to third parties will encourage the diligent surveillance efforts. Thus, OCC is confident that the indemnification provisions of the Section now can be narrowed without creating any unreasonable financial risks to OCC or to its clearing members. For those reasons, OCC believes that the proposal is consistent with Sections 17A(b)(3)(A) and (F) of the Act by enhancing the safeguarding of securities and funds which are in OCC's custody or control and by fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission agrees with OCC that the proposal is consistent with Sections 17A(b)(3)(A) and (F) of the Act in that it requires registered clearing agencies to safeguard securities and funds in their custody or control or for which they are responsible. Thus, the Commission believes the proposal should be approved.

By strengthening the financial reporting standards of Section 13 of the Agreement, the proposal increases the participating exchanges' contractual commitment to support OCC by providing timely and suitable information about financially troubled clearing members. The proposal thus should enable OCC both to assist clearing members in resolving financial difficulties and to take timely action to protect itself and its solvent clearing members against financial exposure created by participant insolvencies.

Because the proposal should enhance significantly OCC's opportunity to take protective measures, the Commission agrees with OCC that the proposed, more limited reciprocal indemnification provisions of Section 23 are appropriate. Although the Commission recognizes that the participant exchanges have no duty, under the proposal, to surveil exchange members or to indemnify OCC for their failure to enforce financial responsibility standards, narrowed indemnification should not expose OCC to unnecessary risk. The Commission expects that the exchanges will continue to carry out their financial surveillance responsibilities under the Act effectively, as they have done in the past. In addition, the proposal does not alter the Agreement's indemnification provisions regarding losses from third party litigation. Accordingly, the Commission believes that such potential liability should act as an incentive for the exchanges to monitor and enforce diligently compliance with financial responsibility standards.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of Section 17A of the Act. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3) (A) and (F) of the Act because it helps assure the safeguarding of securities and funds, fosters cooperation and coordination in the clearance and settlement of securities transactions, and protects investors and the public interest.

In addition, the Commission finds good cause for approving the proposed rule change prior to the thirty-fifth day after the date of publication of notice of filing. In its filing, OCC requested that the proposed rule change be approved on an accelerated basis to permit the rule change to be in place prior to September 23, 1983. Approval of the proposed rule change at this time will permit the NYSE to sign the Agreement, to become a participant exchange, and to commence index options trading on that date. The Commission also notes that the comment period had expired and that it has received no comment letters.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26478 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[9] Such action may include imposing special variation OCC margin under OCC Rule 609, suspending the participant and closing out its positions under Chapter XI of OCC's rules, or instituting disciplinary proceedings under OCC Rules 1201-1203.

[Release No. 20217, File No. 4-281]

Approval of Amendments to the CQ Plan

September 22, 1983.

I. Background and Description of Amendments

On June 27, 1983, the participants in the Consolidated Quotation Plan ("CQ Plan")[1] submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), two amendments to the CQ Plan. The first amendment enabled subscribers to securities information provided by the Consolidated Quotation System ("CQS") to install interrogation devices at enclosed locations accessible to the general public. These locations would include building lobbies, restaurants, and transportation terminals. The second amendment would permit the CQ administrators to waive subscriber fees for those participating in programs testing new CQ services.

On July 6, 1983, the Commission granted the first amendment summary effectiveness, ordered that the amendment take effect for a period of 60 days upon publication of notice thereof in the **Federal Register**, and solicited comment on whether to approve permanently the amendment. In addition, the Commission solicited comment on whether to approve the second amendment.[2]

II. Approval of Amendments

The Commission received no response to its solicitation of comments. In regard to the first amendment, because the Commission believes that allowing installation of display devices in controlled public locations broadens the public's access to current market information, consistent with the statutory goal of ensuring the "availability to brokers, dealers, and investors of information with respect to quotations for * * * securities" expressed in Section 11A(a)(1) of the Act, the Commission finds that approval of this amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

The Commission believes that approval of the second amendment will foster effective testing of new equipment and services utilizing CQ information, which will assure the introduction of useful new services at the earliest

[1] *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 45 FR 34851.

[2] *See* Securities Exchange Act Release No. 19948 (July 6, 1978), 45 FR 32247.

possible date. Accordingly, the Commission finds that approval of the second amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

In accordance with the above, it is ordered, pursuant to Section 11A of the Act, and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that both amendments to the CQ Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-26355 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Revision Form U5S, No. 270-73

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), The Securities and Exchange Commission has submitted for OMB approval revisions to 17 CFR Parts 250 and 259 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*), rules concerning employee advances and the annual report (Form U5S) of registered holding companies.

Submit comments to OMB Desk Officer: Mr. Robert Veeder, (202) 395-4814, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

September 22, 1983.

[FR Doc. 83-26354 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20191 (SR-CBOE-83-32)]

Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

September 16, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1983, the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Jackson, Chicago, IL 60604, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would establish exercise price intervals of five points for CBOE's oil (Integrated International) Industry Index (the "Oil Index") regardless of whether the index value is below or above 100.[1] In its filing, CBOE explained the proposed rule change as follows: In general, CBOE's policy is to have exercise price intervals of five points for securities trading under 100 and 10 points for securities trading above 100. CBOE's two broad-based index options (the Standard and Poor's 100 and 500 ("S&P 100 and 500") index options), however, have five point intervals even though their index values are above 100. This is in recognition of the fact that an index is generally less volatile than the price of many of the individual stocks underlying the index. Because the Oil Index is, like the S&P 100 and 500, a cash-settled index option, the Exchange believes that five point intervals also are appropriate for the Oil Index. CBOE also stated that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act, in that it will facilitate trading in the Oil Index.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Reference should be made to File No. SR-CBOE-83-32.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the CBOE.

The Commission agrees with CBOE that, as a general matter, an index should be less volatile than prices of individual stocks. Thus, establishing exercise price intervals five points apart regardless of the value of the index may not result in a large number of possibly illiquid index options series. The Commission notes, however, that as the value of the index increases the volatility of the index in raw (but not necessarily in percentage terms) may be expected to increase. This, if the Oil Index increased to substantially higher levels strike price intervals greater than five points may be appropriate. At this point, however, it appears unnecessary to address that eventuality.[2] In addition, the Commission notes that it has previously approved five point exercise price intervals for CBOE's Office and Business Industry Index option, and for Amex' Computer Industry Index and Oil and Gas Index options, all three of which are, like the Oil Index option, narrow-based index options. In addition, the Commission has previously approved 5 point intervals for CBOE's S&P 100 and 500 index options as well as for Amex' Major Market Index and Amex Index options, which are broad-based index options.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Commission has previously approved five point exercise price intervals for both CBOE and Amex index options, both narrow- and broad-based; and in that CBOE desires to begin trading Oil Index options on September 19, 1983. The Commission also finds that accelerated approval is appropriate and in the interest of investors and the public.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above is approved.

[1] 17 CFR 200.30-3(a)(29).

[1] The Commission approved the listing and trading of CBOE's Oil Index on August 26, 1983 (Securities Exchange Act Release No. 20125, August 26, 1983).

[2] CBOE has agreed that in the event the index value increases substantially, it will review the proprietary of 5 point exercise price intervals. Telephone conversation, September 16, 1983, between Paul Lowenstein, CBOE, and Alden Adkins, SEC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-26353 Filed 9-27-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Boston, Massachusetts, will hold a public meeting at 1:00 p.m., on Tuesday, October 18, 1983, in the District Director's Conference Room, 150 Causeway Street, 10th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. McNally, District Director, U.S. Small Business Administration, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114; (617) 223-4074.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 22, 1983.

[FR Doc. 83-26404 Filed 9-27-83; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City will hold a public meeting at 9:00 a.m. on Tuesday, October 18, 1983 at the Federal Building, 125 South State Street, Room 1201, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah, (801) 524-5800.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 22, 1983.

[FR Doc. 83-26462 Filed 9-27-83; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., Thursday, October 20, 1983, at the Owyhee Plaza "Gold Room", 1109 Main Street, Boise, Idaho, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Verne A. Leighton, District Director, U.S. Small Business Administration, 1005 Main Street, Boise, Idaho, (208) 334-1096.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 22, 1983.

[FR Doc. 83-26463 Filed 9-27-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Lansing, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed reconstruction of M-44 (East Beltline) between I-96 and Plainfield Avenue in Kent County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Barkema, District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1851 or (Commercial) (517) 377-1851 or Mr. Jack Morgan, Manager, Public Involvement Section, Bureau of Transportation Planning Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, telephone (517) 373-2166 or toll free in Michigan 800-292-9576.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Michigan Department of Transportation is preparing an Environmental Impact Statement (EIS) for the proposed reconstruction of M-44 (East Beltline) between I-96 and Plainfield Avenue, Kent County, Michigan. The proposed project is approximately 5.7 miles in length and is needed to accommodate current and future traffic volumes, improve operating conditions and the safety of the traveling public. The present facility varies from two to four lanes, contains a number of deficient vertical curves, poor base conditions and has experienced an increasing number of accidents throughout its length.

Alternatives under consideration include: (1) No Action; (2) Reconstruction to 5-lanes; and (3) Reconstruction to a 4-lane boulevard. Three sub-alternate boulevard concepts are being considered and are identified as the: East Alignment, West Alignment and Combination East-West Alignment. All three boulevard concepts would consists of two 24 foot pavements separated by a 60-foot median and require the acquisition of additional right-of-way and displacements. The 5-lane alternate would be constructed primarily within the existing highway right-of-way without displacements.

Early coordination with a number of Federal, State and local agencies has identified the more significant issues to be addressed in the EIS. Accordingly, no agency scoping meeting is planned at this time. A scoping document has been prepared identifying the alternates and the social, economic or environmental issues involved and is available to all interested agencies, organizations and individuals on request. A pre-study meeting will be held in the near future to provide the public an opportunity to discuss the proposed action. Comments on the scoping document and issues identified are invited from all interested parties. Requests for a copy of the scoping document or any comments submitted should be addressed to the above contact persons. The closing date for comments is October 30, 1983.

The draft EIS is scheduled for completion is mid-1984 and will be made available to public and agency review and comment.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued: September 19, 1983.

John C. Kliethermes,

Assistant Division Administrator, Lansing, Michigan.

[FR Doc. 83-26334 Filed 9-27-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Income Tax Treaty Negotiations With Indonesia and Thailand To Be Resumed

The Treasury Department announced that income tax treaty negotiations with

Indonesia and Thailand will be resumed in the near future. The negotiations with Indonesia will take place in Jakarta during the week of October 10, 1983. Preliminary discussions with Thailand will take place in Bangkok on October 18 and 19, 1983, to be followed by negotiations in Washington in February 1984. Since the last negotiations took place several years ago in each case, the Treasury Department invites interested persons to submit additional comments at this time on issues concerning Indonesian and/or Thai income taxes imposed on income derived in those countries. Comments should be submitted in writing to Alan W. Granwell, International Tax Counsel, U.S. Treasury, Room 3064, Washington, D.C. 20220.

Dated: September 23, 1983.

John E. Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 83-26461 Filed 9-27-83; 8:45 am]

BILLING CODE 4810-25-M

Supplement to Department Circular, Public Debt Series—No. 29-83]

Notes, Series F-1990

The Secretary announced on September 21, 1983, that the interest rate on the notes designated Series F-1990, described in Department Circular—Public Debt Series—No. 29-83 dated September 14, 1983, will be 11½ percent. Interest on the notes will be payable at the rate of 11½ percent per annum.

Washington, September 22, 1983.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-26329 Filed 9-27-83; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular, Public Debt Series—No. 28-83]

Notes, Series K-1987

The Secretary announced on September 20, 1983, that the interest rate on the notes designated Series K-1987, described in Department Circular—Public Debt Series—No. 28-83 dated September 14, 1983, will be 11⅛ percent. Interest on the notes will be payable at the rate of 11⅛ percent per annum.

Washington, September 21, 1983.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-26328 Filed 9-27-83; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 189
Wednesday, September 28, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Legal Services Corporation	2
Nuclear Regulatory Commission	3
Securities and Exchange Commission	4

1

CIVIL AERONAUTICS BOARD

[M-388; Sept. 21, 1983]

TIME AND DATE: 9:30 a.m., September 28, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 41180, *Anthony A. Rubino* v. *Pan American World Airways*, petition for reconsideration of Order 83-5-89 denyg petition for arbitration of LPP claim. (Memo 1832-B, OGC)
3. Docket 41357, ATA petition to repeal notice concerning public inspection of tariffs. (Memo 2023, OGC, BIA, OCCCA)
4. Docket 41217, Direct flights—Petition for rulemaking. (OGC, BDA, OCCCA, BIA, OEA)
5. Docket 41184, Petition of Donald Pevsner for rulemaking on air carrier price advertising. (OGC, OCCCA)
6. Revision of Japan Charter Procedures. (OGC, BIA, BDA, OCCCA)
7. Docket 34681, Petition of ANA, Ltd. d.b.a. Air North to reopen the upper New York State carrier selection case and for retroactive compensation. (BDA)
8. Docket 40741, Application of Air Midwest, Inc., for compensation for losses at Roswell, Carlsbad and Hobbs, New Mexico. (Memo 2025, BDA, OCCCA, BCAA, OC)
9. Dockets 40130 and EAS-381, Second-year rate of compensation for ASA for the provision of essential air transportation at Athens, Georgia. (Memo 898-B, BDA, OCCCA, OC)
10. Docket 36506, Essential air service for Natchez, Mississippi. (Memo 2022, BDA, OCCCA, OC)
11. Dockets 40808, 40809, 41079, Notices of Republic Airlines and Horizon Airlines to suspend service at Klamath Falls and Bend/Redmond, Oregon. (Memo 2024, BDA, OCCCA)
12. Docket 40274, Petitions for reconsideration of the selection of Bemidji Airlines to provide essential air service at Thief River Falls, Minnesota. (Memo 1136-G, BDA, OCCCA, OGC)
13. Docket 40807, Wien's notice to suspend service at Iliamna and McGrath. (Memo 1500-H, BDA, OCCCA)
14. Dockets EAS-765 and EAS-792, Essential air service determinations for Berlin, New Hampshire and Newport, Vermont. (BDA)
15. Docket 40910, Application of Northeastern International Airways, Inc. for a certificate of public convenience and necessity to engage in scheduled air transportation between the United States and several foreign points. (BIA, OGC, BALJ, BCAA)
16. Docket 40818, In the Matter of the Schedules of Aeronaves Del Peru, S.A. and Compania de Aviacion "Faucett," S.A. (Memo 1394-H, BIA, OGC, BALJ)
17. Report on Italy Negotiations. (BIA)
18. Report on Israel Negotiations. (BIA)
19. Report on Scandinavian Negotiations. (BIA)
20. Report on Philippine Discussions. (BIA)

SUPPLEMENTARY INFORMATION: Discussion of Items 17-20 at the September 28, 1983 Board Meeting concerns strategy and positions that have been or may be taken by the United States regarding these countries. Public disclosure, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interest of the United States. Accordingly, the following Members have voted that the meeting on these items would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(i)(2) and that the meeting on these items should be closed:

Chairman Dan McKinnon
Member Gloria Schaffer
Member James R. Smith
Member Diane K. Morales

STATUS: 1-16 Open, 17-20 closed.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Taylor, the Secretary, (202) 673-5068.

[S-1368-83 Filed 9-26-83; 9:23 am]

BILLING CODE 6320-01-M

2

LEGAL SERVICES CORPORATION

Executive Session, Board of Directors

Status of Meeting: Closed to discuss personal, personal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (e), (f), and (h). Vote and certification of authorization for closing are recorded below.

The Legal Services Corporation Board of Directors Executive Session is called pursuant to the vote of the four Directors presently in office who adopted the following resolution:

Upon motion of Board Member and Chairman, Robert E. McCarthy, duly seconded, the Legal Services Corporation hereby authorizes closing its meeting to be scheduled for October 3, 1983. The closing of the meeting from the public for an executive session is authorized pursuant to the provisions of 45 CFR 1622.6, in order to discuss matters falling under 45 CFR 1622.5 (a), (e), (f), and (h).

The members of the Board voted as follows:

Robert McCarthy
Milton Masson
Daniel Rathbun
Donald Santarelli

Certification

As Deputy General Counsel of the Legal Services Corporation, I hereby certify that a majority of the members of the Board of Directors of the Legal Services Corporation has approved closing the Board meeting scheduled to be held on October 3, 1983, to discuss internal personnel procedures, personal matters, investigations, and litigation concerning the Corporation. I hereby certify that in my opinion the closing of the meeting is authorized by the Government in the Sunshine Act, 5 U.S.C. 552(c), (2), (6), (7), and (10), and under the Legal Services Corporation regulations, 45 CFR 1622.5 (a), (e), (f), and (h).

September 23, 1983.

John Meyer,
Deputy General Counsel.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia.

Time and Date: Monday, October 3, 1983, 7:30 p.m.

Contact Person for More Information: LeaAnne Bernstein, Secretary of the Corporation, (202) 272-4040.

Date issued: September 23, 1983.

Donald P. Bogard,

President.

[S-1370-83 Filed 9-[illegible] 3:12 pm]

BILLING CODE 6820-35-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 26, 1983 (Revised) and Week of October 3, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Changes—Week of September 26—Tuesday, September 27:*

1:50 p.m.:
Affirmation/Discussion and Vote (Public Meeting) (New Item):
a. Final Rule on Temporary Operating Licensing Authority (*Postponed* from September 21)

2:00 p.m.:
Briefing on Report of Committee on Rights of Individuals in Investigations (Public Meeting) (As Announced)

3:30 p.m.:
Discussion of Diablo Canyon Schedule (Public Meeting) (New Item)

Rest of Week Remains as Announced

Week of October 3—Monday, October 3:

2:00 p.m.:
Discussion of Indian Point (Public Meeting)

3:30 p.m.:
Briefing on BWR Pipe Crack Issues (Public Meeting)

Wednesday, October 5:

2:00 p.m.:
Discussion of Management-Organization and Internal Personnel Matters (closed—Exemption 2 and 6)

Thursday, October 6:

10:00 a.m.:
Discussion of Proposed Insider Safeguards Rule (Public Meeting)

Friday, October 7:

10:00 a.m.:
Briefing by Swedish on PIUS Reactor (Public Meeting)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

September 22, 1983.

[S-1367-83 Filed 9-23-83; 4:46 pm]

BILLING CODE 7590-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 3, 1983, at 450 5th Street NW., Washington, D.C.

A closed meeting will be held on Tuesday, October 4, 1983, at 9:30 a.m. An open meeting will be held on Wednesday, October 5, 1983 at 2:30 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 4, 1983, at 9:30 a.m., will be:

Formal orders of investigation
Institution of administrative proceeding of an enforcement nature
Litigation matter
Institution of injuctive actions
Regulatory matter bearing enforcement implications

The subject matter of the open meeting scheduled for Wednesday, October 5, 1983, at 2:30 p.m., will be:

1. Consideration of questions relating to the Commission's rule concerning securities ownership by Commission employees. For further information, please contact Myrna Siegel at (202) 272–2430.

2. Consideration of whether to publish for comment, as part of its "sunset" review of the "100" series of rules under the Securities Act of 1933, proposed amendments to Rule 139, which provides guidance under Section 5 of the Securities Act with respect to the publication of broker-dealer research reports which contain information, opinions or recommendations regarding a registrant in registration. The proposed amendments would expand the class of publications that come within the protection of the Rule by updating its requirements to accord with the Integrated Disclosure System. The Commission also will consider whether to solicit comment on the need for changes to Rules 137 and 138. For further information, please contact V. Gerard Comizio at (202) 272–2589.

3. Consideration of whether to issue a release proposing for comment certain revisions to Rule 12h–3 under the Securities Exchange Act of 1934. Among other things, the proposed changes would permit the immediate suspension of the Section 15(d) periodic reporting obligation whenever an issuer has fewer than 300 security holders. For further information, please contact William E. Toomey at (202) 272–2573.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272–2092.

Dated: September 23, 1983.

[S-1369-83 Filed 9-26-83; 12:01 pm]

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federal register

Wednesday
September 28, 1983

Part II

Federal Emergency Management Agency

Review and Approval of State and Local Radiological Emergency Plans and Preparedness; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 350

[Docket No. FEMA THD-3501]

Review and Approval of State and Local Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule establishes policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for coping with the offsite effects of radiological emergencies which may occur at commercial nuclear power facilities. The rule does not cover other Nuclear Regulatory Commission (NRC) licensed facilities nor United States Government-owned, non-licensed nuclear facilities. The rule sets out criteria which will be used by FEMA in reviewing, evaluating and approving plans and preparedness. It specifies how and where a State may submit plans. It describes certain processes by which FEMA makes findings and determinations as to the adequacy of State and local plans and the capability of State and local governments to effectively implement these plans and preparedness measures for specific sites. Such findings and determinations and, where appropriate, plan approvals, are to be submitted to the Governors of the affected States and to the NRC for its use in licensing proceedings. This rule was promulgated in proposed form on June 24, 1980 (45 FR 42321) and August 19, 1982 (47 FR 36386) for public comment and interim use. This rule reflects comments received on the proposed rule published on August 19, 1982.

EFFECTIVE DATE: This regulation is effective October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Marshall E. Sanders, Chief, Program Development Branch, Technological Hazards Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472 (Telephone 202/287-0179).

SUPPLEMENTARY INFORMATION:

Presidential Assignments

On December 7, 1979, the President, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (known as the Kemeny Commission), announced, in part, a series of decisions and took a number of actions in the area of emergency planning and preparedness. Among other assignments, the President directed FEMA to:

(1) Take the lead in offsite [radiological] emergency planning and response;

(2) Development and issue an updated series of [Federal] interagency assignments which delineate respective agency capabilities and responsibilities and clearly define procedures for coordination and direction for both emergency planning and response.

(3) Address the need for improved advance preparation for emergencies and public education programs in the context of State emergency response plans.

In compliance with the directive to take the lead in offsite emergency planning and to issue interagency assignments, FEMA published on March 11, 1982, interagency assignments in 44 CFR 351 (45 FR 10758). These assignments replace assignments set out in a Notice published in the **Federal Register** on December 24, 1975, (40 FR 59494). They provide for Federal interagency assistance to State and local governments in their radiological emergency planning and preparedness activities. Federal agency responsibilities for responding to a radiological accident are outlined in the National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents (Master Plan) (45 FR 84910). This "Master Plan" will be superseded by the Federal Radiological Emergency Response Plan (FRERP) when it is published (projected for December 1983) in the **Federal Register** as an interim rule. The FRERP will become the Federal plan for coordianting and managing the Federal response to all types of radiological accidents including those occurring at licensed commercial nuclear power plants.

Basis for FEMA Assignment

The Director, FEMA, pursuant to Reorganization Plan No. 3 of 1978 and Executive Order 12148 of July 20, 1979, establishes policies for, and coordinates civil emergency planning, management, mitigation and assistance functions of Executive agencies. The Director, FEMA, represents the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response and recovery programs.

The term "civil emergency" is defined in 2-203 of Executive Order 12148 to include any accidental, natural, man-caused or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property. This definition clearly encompasses an accident at a commercial nuclear power facility.

Under Section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), the Director is to establish a program of disaster preparedness which includes, among other matters, preparation of disaster preparedness plans for warning, emergency operations, training and exercises and coordination of Federal, State and local programs. Further, the Director is to provide technical assistance and grants to States in developing comprehensive plans and practical programs for preparation against disasters. The technical assistance and grant program provided under this authority may be used by States for planning and preparedness activities related to commercial nuclear power plant accidents.

Some of FEMA's predecessor agencies, as well as NRC, have been involved in planning for radiological emergencies at commercial nuclear power facilities for some years. These activities were voluntary, as neither Federal law nor regulations required States or local governments to have peacetime nuclear emergency plans, nor required States with plans to test those plans.

The Atomic Energy Commission (AEC), later NRC, implemented a non-statutory program of planning and assistance to the States which included: the formation of a Federal Interagency Central Coordinating Committee (FICCC) (now the Federal Radiological Preparedness Coordinating Committee (FRPCC) under the chairmanship of FEMA); the preparation and issuance of the *Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities*, reissued as NUREG-75/111; and the formation of subcommittees on training and exercises and emergency instrumentation. The Office of Emergency Preparedness (OEP), later the Federal Preparedness Agency (FPA), and now FEMA, issued descriptions of agency assignments. In January 1973, the OEP issued a statement which designated the AEC as lead agency.

On December 24, 1975, the FPA issued a revised and updated Federal Register Notice (40 FR 59494). Lead agency responsibility for "reviewing and concurring in State radiological emergency response plans," was assigned to the NRC and the planning

assistance was expanded to include transportation of radio-active materials. NRC also issued guidance in a *Handbook for Federal Assistance to State and Local Governments in Radiological Emergency Response Planning*—NUREG–0093, June 1, 1976—revised January 1979, applicable to other Federal agencies. The number of involved agencies that agreed to the assignments increased from five to seven. These included the Environmental Protection Agency (EPA); the Department of Health, Education and Welfare, now the Department of Health and Human Services; the Defense Civil Preparedness Agency and the Federal Disaster Assistance Administration, whose functions have now been transferred to FEMA; the Department of Transportation; the Energy Research and Development Administration, now the Department of Energy; and the Nuclear Regulatory Commission.

This interagency process, with NRC as lead agency, continued for the next few years. The NRC established a program of voluntary concurrence and concurred in several State plans. The accident at the Three Mile Island nuclear power facility, which occurred on March 28, 1979, caused a major rethinking of emergency planning and preparedness by the NRC and other agencies. The accident led to the Kemeny Commission Report and the Presidential actions.

To implement the President's assignment, the NRC and FEMA signed a Memorandum of Understanding (MOU) on January 4, 1980, describing each agency's responsibilities in preparing for emergencies at nuclear facilities and related activities (45 FR 5847). This MOU was revised and updated on November 1, 1980. (45 FR 82713).

The terms of the MOU apply to emergency preparedness for all commercial nuclear power plants, certain nuclear fuel cycle facilities and nuclear material licensees whose operations have a potential for significant accidental offsite releases of radiation. However, the parties intended that the initial progam emphasis be placed on emergency preparedness at commercial nuclear power plants, the focus of this rule.

FEMA's responsibilities under the MOU are to:

(1) Take the lead in offsite [radiological] emergency planning and review and assess State and local emergency plans for adequacy.

(2) Complete, by June 1980, the review of State and local emergency plans in those States with operating reactors. (A report was submitted to the President on June 30, 1980.)

(3) Complete, as soon as possible, the review of State and local emergency plans in those States with plants scheduled for operation in the near future. (This review is included in the June 30, 1980, *Report to the President.)*

(4) Make findings and determinations as to whether State and local emergency plans are adequate and capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy).

(5) Assume responsibility for emergency preparedness training of State and local officials.

(6) Develop and issue an updated series of [Federal] interagency assignments which would delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [These are described in 44 CFR 351 (47 FR 10758, March 11, 1982).]

The NRC responsibilites under the MOU are to:

(1) Assess licensee emergency plans for adequacy.

(2) Verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

(3) Review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.

(4) Make decisions on the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite, as determined by the NRC, and offsite, as determined by FEMA and reviewed by NRC) and issuance of operating licenses or (orders for) shutdown of operating reactors.

Thus, the lead for review of the adequacy of offsite emergency plans and their capability of implementation has been assigned to FEMA and there is no longer an NRC voluntary concurrence program for State emergency plans. The previous NRC "concurrences" do not satisfy all the requirements for FEMA approval of State and local plans under this regulation.

FEMA's reviews, findings and determinations will be based upon guidance jointly issued by FEMA and NRC entitled *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG–0654/FEMA–REP–1, Rev. 1, November, 1980). This guidance provides a basis for NRC licensees and State and local governments to develop radiological emergency plans and improve emergency preparedness associated with nuclear power facilities. The document combines the guidance to State and local governments with the guidance to the licensees of NRC and supersedes previous guidance and criteria published by FEMA and NRC. It is also intended for use by Federal officials in reviewing and assesssing the adequacy of State, local and nuclear power facility operator emergency plans and preparedness. NUREG 0654/FEMA–REP–1, Rev. 1 contains a series of planning standards (which are part of this rule) and a listing of specific criteria for preparation and evaluation of the planning and preparedness activities of State and local governments as well as of the licensees of NRC.

This rule is intended to be consistent with the NRC emergency planning rule [10 CFR Parts 50 (Appendix E) and 70, as amended].

The NRC will base its findings on a review of FEMA findings and determinations as to whether State and local plans are adequate and capable of being implemented. The regulation described in this part addresses FEMA's review function. NRC retains overall responsibility for making decisions under its enabling legislation in determining whether licenses should be issued or operations suspended.

This regulation describes a procedure by which FEMA reviews and assesses State and local emergency plans and preparedness to deal with a radiological emergency and "approves" such plans. Further, FEMA may use the data obtained in its approval process to support its findings in NRC licensing proceedings and any related court actions.

Insofar as FEMA is concerned, there is no legal requirement that a State or local government submit its plan to FEMA for review, and FEMA's failure to approve such plan is not accompanied by any sanction or refusal to accord a benefit. Insofar as the procedure may have economic, environmental or legal consequences or impact, these result from NRC action on its rule and from the role which FEMA plays because of the MOU in the NRC licensing process. NRC has, in connection with its rule, adopted a "Finding of No Significant Impact" and has made an environmental assessment. The NRC assessment addresses the subject of cost, and it is clear from the cost data related to offsite planning and preparedness that this FEMA rule is not a significant regulation requiring a

regulatory analysis under Executive Order 12291. Further, this rulemaking proceeding was initiated prior to January 1, 1981, and thus is not subject to the requirements of the Regulatory Flexibility Act for regulatory flexibility analysis.

An environmental assessment has been prepared in which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

Comments and FEMA's Response

Comments on the proposed rule published on August 19, 1982, were received from 31 organizations. These comments were received from State and local governments, Federal agencies, citizen groups and organizations representing utility companies. The significant comments received and FEMA's responses are highlighted below. Emphasis was given to new concerns not previously addressed in the comments section of the August 19, 1982, proposed rule.

(1) *Comment:* The planning criteria in NUREG–0654/FEMA–REP–1, Rev. 1 should not be mandatory. (Section 350.5)

Discussion: Recommendations were made that the planning criteria in NUREG–0654/FEMA–REP–1, Rev. 1 should not be required for implementation but rather should be regarded as one option for meeting planning and preparedness requirements; or alternately, the planning standards should remain as mandatory requirements and the specific planning criteria should be made optional.

Response: The specific criteria in NUREG–0654/FEMA–REP–1, Rev. 1 have been carefully developed and represent the best standardized means for establishing adequate preparedness. While there may be other options and criteria that could be used, these criteria have been generally well received and remain in our judgment the specific guidance that will assure optimum preparedness. For this reason, the planning standards along with the criteria remain operative as the basis for reviewing, evaluating and approving State and local emergency plans and preparedness.

(2) *Comment:* A recommendation was made that specific procedures be developed and included in this rule for alerting voluntary organizations such as the American Red Cross and citizen band (CB) groups when significant incidents occur at commercial nuclear power plants. (Section 350.5)

Discussion: This recommendation was made as there are no specific references either in 44 CFR Part 350 or NUREG–0654/FEMA–REP–1, Rev. 1 to notifying voluntary organizations when incidents occur. Also, as voluntary organizations almost always provide important services in emergency situations, procedures should be developed by State and local governments for alerting and notifying such organizations.

Response: While neither the rule, 44 CFR Part 350, nor NUREG–0654/FEMA–REP–1, Rev. 1 (guidance document) specifically address notification of voluntary organizations, notification of such organizations is strongly implied in the guidance document in Section E.2. as it states: "Each organization shall establish procedures for alerting, notifying, and mobilizing emergency response personnel." The phrase, "emergency response personnel," is used in a generic sense to refer to all pertinent organizations which may have a significant role in responding to an incident. As Section E.2. of the guidance document encompasses procedures for notifying voluntary organizations, FEMA does not believe it is necessary to add specific language to address this recommendation. Also, a review of some State and local emergency response plans revealed that all of them had incorporated references to notifying specific voluntary organizations such as the American Red Cross. It is FEMA's judgment that this recommendation deserves special emphasis in the form of a guidance memorandum to make sure that State and local governments develop procedures for notifying voluntary organizations.

(3) *Comment:* FEMA should use different language throughout the rule to reflect both FEMA's and States' proper relationship to local governments. Specifically, the words, "should," "shall," and "will" need to be replaced by the phrases, "are encouraged to" or "are requested to." (Affects many sections in rule).

Discussion: This recommendation is made on the basis that neither FEMA nor states can mandate any actions to local governments, except under specific emergency powers. Changing the language, as indicated, would reflect the proper role of both FEMA and States with local governments.

Response: Once State and local governments submit their plans to FEMA for review and evaluation, State and local governments are required to conform to the provisions of our rule; therefore, the present language reflects the proper FEMA relationship to both State and local governments.

(4) *Comment:* Separate criteria should be developed for reviewing and evaluating exercises in addition to criteria for plans review. Also, guidance for the FEMA Regional Offices in the form of manuals or guides should be developed for consistently applying the exercise criteria. (Section 350.5)

Discussion: The argument is made that while it may be possible to review and evaluate plans per NUREG–0654/FEMA–REP–1, Rev. 1, it is difficult to use this guidance to evaluate exercises. The application of criteria, as set forth in emergency response plans, in an exercise will be subject to considerable variation depending on the response actions required by the exercise scenario. Therefore, a different set of criteria and evaluation approach is needed for evaluating exercises consistently by all FEMA Regions.

Response: FEMA believes this recommendation deserves consideration to determine if a different set of criteria is needed for evaluating exercises or if only special guidance is needed for applying the existing criteria to exercises. This matter will be addressed within the context of the review and revision of NUREG–0654/FEMA–REP–1, Rev. 1.

(5) *Comment:* FEMA should exercise its authority to resolve interjurisdictional disputes associated with the determination of Emergency Planning Zone (EPZ) boundaries and the submission of plans. (Section 350.7)

Discussion: The respondents are addressing two types of interjurisdictional concerns: (1) The precise delineation of EPZ boundaries involves contextual determinations as to whether or not certain jurisdictional areas or facilities should be included in a specific EPZ. (2) FEMA's approval process for State and local government planning and preparedness is site specific, i.e., it is necessary for all State and local government emergency response plans to be submitted to FEMA before approval can be given to any one of these plans. Because of this site-specific approach, coordinated submittal of plans is necessary for FEMA's timely review and evaluation of plans. Also the coordinated submission of plans for given sites is an important factor impacting FEMA's scheduling of plans review and evaluation per the NRC's licensing process.

Response: The current language in the rule supports the resolution of interjurisdictional issues through a negotiated process involving four parties—State and local governments, the utilities and Federal agencies (FEMA and NRC). FEMA believes it is in the best interest of all concerned parties to provide for a resolution of interjurisdictional concerns through such a negotiated process. Also, with

regard to the submission of plans, FEMA has no authority to mandate the timing of submission of plans from State and local governments. These governmental entities are aware of the need for synchronizing their planning and preparedness activities with both FEMA's review process and the NRC's licensing schedule.

(6) *Comment:* State and local governments should provide rationales for determining EPZ boundaries and for excluding urban areas and major facilities within 20 miles of power plants, within the plume exposure pathway EPZ.

Discussion: While criteria are provided in Section 350.7(b) for determining EPZ boundaries, there is no requirement in this rule that State and local governments provide written statements explaining how the criteria were applied for each power plant. The recommendation is made, therefore, that FEMA should require such documentation and rationales within their plans.

Response: In applying the criteria of Section 350.7 for boundary determinations, local conditions such as demography, topography, land characteristics, access routes and local jurisdictions are accounted for, resulting in de facto justification. It is the intention of this section to encourage the exercise of local planning responsibility, judgment and decisionmaking. In addition, the 10-mile plume exposure pathway EPZ boundary, as presented in NUREG 0654/FEMA–REP–1, Rev.1 and reflected in this rule [(Section 350.7(b)], was formulated on the technical planning basis determinations inherent within NUREG–0396 EPA 520/1–78–016 (*Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants*, December 1978) which was adopted by the Environmental Protection Agency, the NRC and FEMA. On the basis, then, of the consensus as stated in NUREG–0396, it has been determined that there is no need for State and local governments to undertake planning and preparedness beyond this 10-mile perimeter. Therefore, there is no need to require State and local governments to document plume exposure pathway EPZ determinations to a distance of 20 miles.

(7) *Comment*. FEMA should not require a statement from the State that the plans provide an adequate basis for protecting the public health and safety of its citizens. [Section 350.7(d)].

Discussion. According to the respondent, requiring States to provide such a statement constitutes an "insult to State emergency capabilities."

Response: This statement does not require any additional burdens on the States that do not already exist as the statement reflects the responsibility of Governors and their designated officials, which is to protect the health and safety of their citizens. Also, this statement provides assurance to Federal reviewers that the State has applied its best effort to producing an adequate plan.

(8) *Comment*: FEMA should adopt a formal review time period for the Regional Director's review of State and local government plans, such as a 45-day period from receipt of plans. (Section 350.11)

Discussion: This recommendation was made in order to afford State and local governments an opportunity to better schedule and manage their planning and preparedness activities. Establishing a specific time frame for the Regional Director's review and evaluation would enable State and local governments to schedule activities subsequent and related to the Regional Director's evaluation of their plans.

Response: A specific time frame for Regional Director reviews is not recommended because of the many variables involved in securing and evaluating plans. Some of these variables include not always having all the necessary materials submitted from the State and having to work on a case-by-case basis with State officials to interpret the information and materials submitted. Absence of an imposed time period gives the Regional Director flexibility in working with the State to produce an acceptable plan and related preparedness. This is the objective of the process, which should be done in a timely fashion but not constrained by a rigid schedule.

(9) *Comment*: FEMA should consider either making public meetings an optional requirement or not requiring them at all. (Section 350.10)

Discussion: The respondent points out that many public meetings are poorly attended and that this fact is evidence that these meetings often do not serve any useful purpose for the citizens who live in the vicinity of the plant.

Response: Despite the deficiencies of public meetings as evidenced by poor attendance in some cases, FEMA believes that it is essential to provide an opportunity to the public living around or near a nuclear power plant to be informed about specific emergency response plans and preparedness as well as to discuss specific concerns with responsible officials. Therefore, the public meeting requirement should be retained. Also, in order to make public meetings more meaningful, the language in the rule has been revised in order to have public meetings held after the initial exercise. Thus, in addition to discussions on the emergency response plans, the opportunity is provided to the public to also discuss the exercise.

(10) *Comment:* FEMA received comments from 20 organizations on the proposed language (provided soley for public comment) on exercise frequency in § 350.9(c) of this rule as published on August 19, 1982. In this proposed language, FEMA provided language supporting a change from the annual to the biennial (every two years) exercise frequency and related exercise provisions.

Discussion: Of the 20 organizations which commented on the proposed exercise language, 12 organizations recommended the adoption of the biennial exercise frequency and eight organizations recommended retaining the existing annual exercise requirement.

Response: In this final rule, FEMA has changed the exercise frequency language from an annual to a biennial requirement as stated in § 350.9(c)(1)–(4). FEMA believes that some relaxation in exercise frequency is appropriate at this time because of the experience gained by State and local governments in this and other exercise activity, as well as response to actual emergencies. In addition, reducing the overall number of exercises held should result in higher quality performance and greater emphasis on areas needing improvement in those exercises that are held.

List of Subjects in 44 CFR Part 350

Nuclear power plants and reactors, Radiation protection.

Accordingly, Part 350 is added to Subchapter E of Chapter I, Title 44 Code of Federal Regulations, as follows:

PART 350—REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

350.1 Purpose.
350.2 Definitions.
350.3 Background.
350.4 Exclusions.
350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.
350.6 Assistance in development of State and local plans.
350.7 Application by State for review and approval.
350.8 Initial FEMA action on State plan.
350.9 Exercises.
350.10 Public meeting in advance of FEMA approval.

Sec.

350.11 Action by FEMA Regional Director.
350.12 FEMA Headquarters review and approval.
350.13 Withdrawal of approval.
350.14 Amendment to State plans.
350.15 Appeal procedures

Authority: 42 U.S.C. 5131, 5201, 50 U.S.C. App. 2253(g), Sec. 109, Pub. L. 96-295; Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329); E.O. 12127 (44 FR 19367); and E.O. 12148 (44 FR 43239).

§ 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

§ 350.2 Definitions.

As used in this part, the following terms are defined:

(a) *Director* means the Director, FEMA, or designee;

(b) *Regional Director* means a Regional Director of FEMA, or designee;

(c) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA, or designee;

(d) *FEMA* means the Federal Emergency Management Agency;

(e) *NRC* means the Nuclear Regulatory Commission;

(f) *EPZ* means Emergency Planning Zone.

(g) *Emergency Planning Zone (EPZ)* is a generic area around a commercial nuclear facility used to assist in offsite emergency planning and the development of a significant response base. For commercial nuclear power plants, EPZs of about 10 and 50 miles are delineated for the plume and ingestion exposure pathways respectively.

(h) *Plume Exposure Pathway* refers to whole body external exposure to gamma radiation from the plume and from deposited materials and inhalation exposure from the passing radioactive plume. The duration of primary exposures could range in length from hours to days.

(i) *Ingestion Exposure Pathway* refers to exposure primarily from ingestion of water or foods such as milk and fresh vegetables that have been contaminated with radiation. The duration of primary exposure could range from hours to months.

(j) *Full participation* refers to an exercise in which: (1) State and local government emergency personnel are engaged in sufficient numbers to verify the capability to respond to the actions required by the accident scenario; (2) the integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant is tested; and (3) the implementation of the observable portions of State and/or local plans is tested.

(k) *Partial Participation* refers to the engagement of State and local government emergency personnel in an exercise sufficient to adequately test direction and control functions for protective action decisionmaking related to emergency action levels and communication capabilities among affected State and local governments and the licensee.

(l) *Remedial Exercise* is one that tests deficiencies of previous joint exercise that are considered significant enough to impact on the public health and safety.

(m) *Local Government* refers to boroughs, cities, counties, municipalities, parishes, towns, townships and other local jurisdictions within the plume exposure pathway EPZ when any of these entities has specific roles in emergency planning and preparedness in the EPZ.

(n) *Site* refers to the location at which there is one or more commercial nuclear power plants. A nuclear power plant is synonymous with a nuclear power facility.

§ 350.3 Background.

(a) On December 7, 1979, the President directed the Director of FEMA to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA because of its responsibilities under Executive Order 12148 to establish Federal policies for and coordinate civil emergency planning, management and assistance functions and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under Section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Director of FEMA is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) There are two sections in the NRC's fiscal year 1982/1983 Appropriation Authorization (Pub. L. 97-415) that pertain to the scope of this rule. (1) Section 5 provides for the issuance of an operating license for a commercial nuclear power plant by the NRC if it is determined that there exists a State, local or utility plan which provides assurance that public health and safety is not endangered by the operation of the facility. This section would allow the NRC to issue an operating license for such plants without FEMA-approved State and local government plans. (2) Section 11 provides for the issuance of temporary licenses for operating a utilization facility at a specific power level to be determined by the Commission, pending final action by the Commission on the application. Also, this section authorizes the NRC to issue temporary operating licenses for these facilities without the completion of the required (NRC) Commission hearing process. A petition for such a temporary license may not be filed until certain actions are completed including the submission of a State, local or utility emergency response plan for the facility.

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA is currently developing the Federal Radiological Emergency Response Plan (FRERP), which will provide the overall support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants. The FRERP, when published (projected for December 1983), in the **Federal Register** as an interim rule will replace the National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents (Master Plan). The Master Plan was promulgated by FEMA on December 23, 1980 (45 FR 84910).

(e) FEMA has entered into a Memorandum of Understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations will

be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

(f) Notwithstanding the procedures set forth in these rules for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency preparedness around particular sites may be requested by the NRC and provided by FEMA for use as needed in the NRC licensing process. These findings and determinations may be based upon plans currently available to FEMA or furnished to FEMA by the NRC through the NRC/FEMA Steering Committee.

(g) An environmental assessment has been prepared on which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

§ 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local governments. The regulation in this part applies only to State and local planning and preparedness with respect to emergencies at commercial nuclear power facilities and does not apply to other facilities which may be licensed by NRC, nor to United States Government-owned, non-licensed facilities nor the jurisdictions surrounding them.

§ 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) Section 50.47 of NRC's Emergency Planning Rule [10 CFR Parts 50 (Appendix E) and 70 as amended] and the joint FEMA–NRC *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG–0654/ FEMA–REP–1, Rev. 1, November 1980) which apply insofar as FEMA is concerned to State and local governments, are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement them. Both the planning and preparedness standards and related criteria contained in NUREG–0654/ FEMA–REP–1, Rev. 1 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness. For brevity, only the planning standards contained in NUREG–0654/ FEMA–REP–1, Rev. 1 are presented below.

(1) Primary responsibilities for emergency response by the nuclear facility licensee, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has staff to respond to and augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified. (This standard applies only to NRC licensees but is included here for completeness.)

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for the notification of emergency personnel by all response organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance and procedures for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

(9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are establishd for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills and deficiencies identified as a result of exercises or drills are (will be) corrected.

(15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(b) In order for State of local plans and preparedness to be approved, such plans and preparedness must be determined to adequately protect the

public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency.

§ 350.6 Assistance in development of State and local plans.

(a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the approach most likely to provide the best protection to the public. Hence, Federal agencies, including FEMA Regional staff, will be made available upon request to assist States and localities in the development of plans.

(b) There now exists in each of the ten standard Federal Regions a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA Regional official and having members from the Nuclear Regulatory Commission, Department of Health and Human Services, Department of Energy, Department of Transportation, Environmental Protection Agency, the United States Department of Agriculture and Department of Commerce. Whereas in 44 CFR Part 351, the Department of Defense is listed as a potential member of the RACs, it is not listed in this rule because military nuclear facilities are not the subject of concern. The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review plans and observe exercises to evaluate the adequacy of these plans and related preparedness. This assistance does not include the actual writing of State and local government plans by RAC members.

(c) In accomplishing the foregoing, the RACs will use the standards and criteria in NUREG–0654/FEMA–REP–1, Rev. 1, and will render such technical assistance as may be required, appropriate to their agency mission and expertise. In observing and evaluating exercises, the RACs will identify, soon after an exercise, any deficiencies observed in the planning and preparedness effort including deficiencies in resources, training of staff, equipment, staffing levels and deficiencies in the qualifications of personnel.

§ 350.7 Application by State for review and approval.

(a) A State which seeks formal review and approval by FEMA of the State's radiological emergency plan shall submit an application for such review and approval to the FEMA Regional Director of the Region in which the State is located. The application, in the form of a letter from the Govenor or from such other State official as the Governor may designate, shall contain one copy of the completed State plan, including coverage of response in the ingestion exposure pathway EPZ. The application will also include plans of all appropriate local governments. The application shall specify the site or sites for which plan approval is sought. For guidance on the local government plans that should be included with an application, refer to Part I.E. NUREG–0654/FEMA–REP–1, Rev. 1, entitled Contiguous Jurisdiction Governmental Emergency Planning (see (e)). Only a State may request formal review of State or local radiological emergency plans.

(b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion exposure pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC taking into account such local conditions as demography, topography, land characteristics, access routes and local jurisdiction boundaries. The size of the EPZs may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion exposure pathway shall focus on such actions as are appropriate to protect the public from ingesting contaminated food and water.

(c) A State may submit separately its plans for the EPZs and the local government plans related to individual nuclear power facilities. The purpose of separate submissions is to allow approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multiple-facility State, while not approving or acting on the plans necessary for other nuclear power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary. In any event, FEMA approval of State plans and appropriate local government plans shall be site specific.

(d) The applications shall contain a statement that the State plan, together with the appropriate local plans, is, in the opinion of the State, adequate to protect the public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.

(e) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

§ 350.8 Initial FEMA action on State plan.

(a) The Regional Director shall acknowledge in writing within ten days the receipt of the State application.

(b) FEMA shall publish a notice signed by the Regional Director or designee in the **Federal Register** within 30 days after receipt of the application, that an application from a State has been received and that copies are available at the Regional Office of review and copying in accordance with 44 CFR 5.26.

(c) The Regional Director shall furnish copies of the plan to members of the RAC for their analysis and evaluation.

(d) The Regional Director shall make a detailed review of the State plan, including those of local governments, and assess the capability of State and local governments to effectively implement the plan (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). Evaluation and comments of the RAC members will be used as part of the review process.

(e) In connection with the review, the Regional Director may make suggestions to States concerning perceived gaps or deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Associate Director of FEMA.

(f) Two conditions for FEMA approval of State plans (including local government plans) are the requirements for an exercise (see § 350.9), and for public participation (see §§ 350.9 and 350.10.). These activities occur during the Regional review and prior to the forwarding of the plan to the Associate Director.

§ 350.9 Exercises.

(a) Before a Regional Director can forward a State plan to the Associate Director for approval, the State, together with all appropriate local governments, must conduct a joint exercise of that State plan, involving full participation [1]

[1] See § 350.2 for definitions of full participation and remedial exercises.

of appropriate local government entities, the State and the appropriate licensee of the NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and by representatives of other Federal agencies with membership on the RACs and by NRC with respect to licensee response. Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises,[1] to demonstrate to the Regional Director that identified weaknesses have been corrected.

(b) The Regional Director shall be the FEMA official responsible for certifying to the Associate Director that an exercise of the State plan has been conducted, and that changes and corrective measures in accordance with § 350.9(a) above have been made.

(c) State and local governments that have fully participated in a joint exercise within one year prior to the effective date of this final rule will have continuing approval of their radiological emergency plans and preparedness by following the frequency indicated in paragraph (c)(1)–(4) of this section. State and local governments that have not fully participated in a joint exercise within one year prior to the effective date of this final rule will follow the frequency indicated in paragraph (c)(1)–(4) of this section after completion of a joint exercise in which they have fully participated. If, in developing exercise schedules with State and local governments to implement the requirements in paragraph (c)(1)–(4) of this section, the Regional Director finds that unusual hardships would result, he may seek relief from the Associate Director.

(1) Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years.

(2) Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every 2 years. When not fully participating in an exercise at a site, the State shall partially participate [2] at that site to support the full participation of appropriate local governments. Priority shall be given to new facilities seeking an operating license from the NRC and which have not fully participated in a joint exercise involving the State, local governments and the licensee at that site. State and local governments will coordinate the scheduling of these exercises with the appropriate FEMA and NRC Regional Offices and the affected licensees.

(3) Each appropriate local government which has a site within its boundaries or is within the 10-mile emergency planning zone shall fully participate in a joint exercise with the licensee and the State at least every two years. For those local governments that have planning and preparedness responsibilities for more than one facility, the Regional Director may seek an exemption from this requirement by recommending alternative arrangements for approval by the Associate Director.

(4) States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every five years in conjunction with a plume exposure pathway exercise for that site.

(5) Remedial exercises may be required to correct deficiencies observed in exercises conducted for continued FEMA approval. Should this occur, the FEMA Regional Director will determine the participation required from the States and/or local governments.

(d) Within 48 hours of the completion of an exercise conducted for continued FEMA approval, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises, to demonstrate to the Regional Director that identified weaknesses have been corrected. The Regional Director shall forward his or her evaluation of the exercise conducted for continued FEMA approval to the Associate Director including the certification that changes and corrective measures have been made.

(e) Following the exercise conducted for continued FEMA approval, the Regional Director shall conduct a meeting in the vicinity of the nuclear power facility which will include the exercise participants, representatives from the NRC and other appropriate Federal agencies and the public and media as observers. The purpose of this meeting is to discuss the evaluation of the exercise. At the discretion of the Regional Director, written comments from the public and media may be submitted at or after the meeting. These comments will be taken into consideration by the Regional Director in his or her evaluation.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans at the frequency and participation described in this section shall be grounds for withdrawing FEMA approval. (See § 350.13.)

§ 350.10 Public meeting in advance of FEMA approval.

During the FEMA Regional Office review of a State plan and prior to the submission by the Regional Director of the evaluation of the plan and exercise to the Associate Director, the FEMA Regional Director shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Director, shall be to: (1) Acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, and with the conduct of the joint exercise which tested the plans; (2) answer any questions about FEMA review of the plan and the exercise; (3) receive suggestions from the public concerning improvements or changes that may be necessary; and (4) describe to the public the way in which the plan is expected to function in the event of an actual emergency. The Regional Director should assure that representatives from appropriate State and local government agencies, and the affected utility appear at such meetings to make presentations and to answer questions from the public. The public meeting should be held after the first joint (utility, State and local governments) exercise at a time

[2] See § 350.2 for definition of partial exercise.

mutually agreed to by State and local authorities, licensee and FEMA and NRC Regional officials. This meeting shall be noticed in the local newpaper with the largest circulation in the area, or other such media as the Regional Director may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Director, the public meeting or meetings reveal deficiencies in the State plan and/or the joint exercise, the Regional Director shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans and preparedness shall be made until a meeting described in this paragraph shall have been held at or near the nuclear power facility site for which the State is seeking approval.

§ 350.11 Action by FEMA Regional Director.

(a) Upon completion of his or her review, including conduct of the exercise required by § 350.9 and after the public meeting required by § 350.10, the Regional Director shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Associate Director on a site-specific basis.

(b) The Regional Director shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in § 350.5, and shall report the evaluation with respect to each of the planning standards mentioned therein as such apply to State and local plans and preparedness.

(c) The Regional Director shall forward the State plan together with his or her evaluation and other relevant record material to the Associate Director. Relevant record material will include the results of the exercise (i.e., deficiencies noted and corrections made), a summary of the deficiencies identified during the public meeting, recommendations made to the State and commitments made by the State for effecting improvements in its plans and preparedness and actions taken by the State.

§ 350.12 FEMA Headquarters review and approval.

(a) Upon receipt from a Regional Director of a State plan, the Associate Director shall conduct such review of the State plan as he or she shall deem necessary. The Associate Director shall arrange for copies of the plan, together with the Regional Director's evaluation, to be made available to the members of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and to other offices of FEMA with appropriate guidance relative to any assistance that may be needed in the FEMA review and approval process.

(b) If, after formal submission of the State plan and the Regional Director's evaluation, the Associate Director determines that the State plans and preparedness:

(1) Are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Are capable of being implemented (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy); the Associate Director shall approve in writing the State plan. The Associate Director shall concurrently communicate this FEMA approval to the Governor of the State(s) in question, the NRC and the pertinent Regional Director(s) and immediately shall publish in the **Federal Register** a notice of this effect.

(c) If, after formal submission of the State plan, the Associate Director is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall concurrently communicate that decision to the Governor(s) of the State(s), the NRC and the pertinent Regional Director(s), together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revision. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Director(s). The Associate Director shall immediately publish a notice to this effect in the **Federal Register**.

(d) The approval shall be of the State plan together with the local plans for each nuclear power facility (including out-of-State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.

(e) Within 30 days after the date of notification of approval for a particular nuclear power facility or within 30 days of any statement of disapproval of a State plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

§ 350.13 Withdrawal of approval.

(a) If, at any time after granting approval of a State plan, the Associate Director determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Director and the NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either: (1) Corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Associate Director shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the **Federal Register** and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal or approval. The basis upon which the Associate Director makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREG0654/FEMA/REP–1, Rev. 1.

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Associate Director shall negotiate a schedule and a timetable under which the State shall correct the deficiencies.

If, on the agreed upon date, the deficiencies have been corrected, the Associate Director shall withdraw the initial determination and the approval previously granted shall remain valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Directors(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

(c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

§ 350.14 Amendments to State plans.

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented with the plan, would need to have been considered by the Associate Director in making a decision that State or local plans and preparedness are: (1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and (2) capable of being implemented.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Director may determined that certain procedures, such as holding a public meeting or a complete exercise, would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.

(d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Director.

§ 350.15 Appeal procedures.

(a) Any interested person may appeal a decision made under §§ 350.12 and 350.13 of this Part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after the appearance in the **Federal Register**, of the notice of decision relating to the matter being appealed. The appeal must be addressed to the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

(b) Upon receipt of an appeal, the Director or the Director's designee shall review the file, as submitted to the Associate Director, State and Local Programs and Support, by the Regional Director of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Director or the Director's designee shall decide whether or not the Associate Director's initial decision was supported by substantial evidence in the file and is consistent with FEMA policy.

(c) The decision of the Director or the Director's designee shall be published in the **Federal Register** as the final agency decision on the matter and shall not be reviewablw within FEMA, except upon a showing that it was procured by fraud or misrepresentation. In addition to publication in the **Federal Register**, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

Dated: September 15, 1983.

Louis O. Giuffrida,

Director.

[FR Doc. 83-25961 Filed 9-27-83; 8:45 am]

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September 28, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Permitting—Processing, General Content, and Legal, Financial, Compliance and Related Information Requirements of Applications; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 770, 771, 773, 774, 775, 777, 778, 782, 786, 787, and 788

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Permitting—Processing, General Content, and Legal, Financial, Compliance, and Related Information Requirements of Applications

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising its permanent program rules pertaining to: (1) The processing of permits for surface coal mining operations, (2) the general contents of permit applications, and (3) the legal, financial, compliance, and related information requirements of these applications, this rulemaking involves the addition of four new parts to Subchapter G of 30 CFR Chapter VII, the revision of one part, and the removal of six parts. The purpose of these changes is to bring together and reorganize previous Parts 770, 771, 778, 782, 786, 787, and 788. Such changes are needed to clarify permit requirements and procedures for applicants and the public.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Josie Smith, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202-343-5955.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rules Adopted and Responses to Comments
A. Part 701—Permanent Regulatory Program
B. Part 773—Permitting Process
C. Part 774—Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights
D. Part 775—Administrative and Judicial Review of Decisions
E. Part 777—General Content Requirements for Permit Applications
F. Part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), provides various requirements for permits, including application and processing requirements. These include Section 506, which contains the general requirements for permits and renewals; Section 507, which contains permit application requirements, specifies the requirements for confidential information, and provides for public inspection of applications; and Section 508, which describes the information to be included in the reclamation plan and specifies which information is to be kept confidential. In addition, Section 510 provides standards for permit approval or denial; Section 511 sets standards for revisions of permits and transfer, assignment, or sale of permit rights; Section 512 sets standards for coal exploration including conditions when written approval of the regulatory authority is required prior to exploration. Section 513 provides for public notice and public hearings including comments on permit applications and informal conferences; and Section 514 sets out procedures for decisions by the regulatory authority and appeals from such decisions. Other sections of the act relating to requirements for permits under the permanent regulatory program include Sections 101, 102, 201(c), 503, 504, 509, 515, 516, 519, 527, 528, and 529 of the Act.

The permanent regulatory program permitting requirements of the Act were orginally implemented through the adoption of Subchapter G (Parts 770–788) of Title 30, Chapter VII of the Code of Federal Regulations (44 FR 14902 *et seq.*, March 13, 1979). These prior rules dealt with the process of obtaining a permit, the contents of permit applications, and the administrative and judicial review of decisions on permit. Previous Part 770 contained general requirements and definitions for permit issuance under the permanent regulatory program. Previous Part 771 contained general provisions concerning the initiation of a permitting system and the filing of permit applications. Previous Part 778 set forth the minimum legal, financial, compliance, and related information requirements for permit applications for surface mines; previous Part 782 set forth similar requirements for underground mines. Previous Part 786 covered public participation and review and approval of permit applications. Previous Part 787 governed administrative and judicial review of permit decisions. Previous Part 788 regulated permit revisions and renewals; transfer, assignment, or sale of permit rights; and periodic review of existing permits.

Through this rulemaking, OSM is reorganizing and simplifying a portion of Subchapter G to provide a more logical sequence to permit processing and content requirements; to recognize the role of the States as primarily responsible for developing, approving or disapproving and enforcing permitting requirements for surface coal mining operations; and to eliminate overly burdensome, counterproductive and duplicative rules. In addition to revising Subchapter G, this final rule also includes revisions to certain applicability provisions and definitions, which relate to permitting and which are located in Part 701 of Subchapter A, General.

Rules which deal with the process of obtaining a permit are consolidated in final Part 773. Part 773 also incorporates most of the requirements of previous Parts 770, 771, and 786. Part 774 deals with the regulatory authority review and modification of permits and incorporates the requirements of previous Part 788. Part 775 covers the administrative and judicial review of decisions and incorporates the requirements of previous Part 787.

All rules dealing with the general content requirements for permit applications, including portions of previous Part 771, are in Part 777. All rules dealing with the legal, financial, compliance, and related information required in permit applications, including previous Part 782 dealing with underground mines, are contained in final Part 778.

To assist the reader in understanding all the changes in the final rules, the following derivation table shows the relationship of the final permitting rules to the previous rules and the proposed rules of June 25, 1982 (47 FR 27686).

DERIVATION TABLE—PERMITTING

Part 701

Final definitions	Previous rule	Proposed rule
§ 701.5:		
Administratively complete application	§ 770.5	§ 701.5
Applicant	§ 770.5	§ 701.5

DERIVATION TABLE—PERMITTING—Continued

Part 701

Final definitions	Previous rule	Proposed rule
Application	§§ 770.5 and 701.5	§ 701.5
Complete and accurate application	§ 770.5	§ 701.5
Irreparable damage to the environment	§ 786.5	§ 701.5
Principal shareholder	§ 770.5	§ 701.5
Property to be mined	§ 770.5	§ 701.5
Successor in interest	§ 788.5	§ 701.5
Transfer, assignment or sale of permit rights	§ 788.5	§ 701.5
Violation notice	§ 770.5	§ 701.5
Willful violation	§ 786.5	§ 701.5
§ 701.11:		

Section 701.11(d) is revised to be consistent with changes made in these final permitting rules.

Final Part 773

Final rule	Previous rule	Proposed rule
§ 773.1	§§ 770.1, 771.1, 786.1 and 788.1	§ 773.1
§ 773.10		§ 773.10
§ 773.11:		§ 773.11:
(a)	§ 771.11	(a)
(b)(1)	§ 771.13(a)	(b)(1)
(b)(2)	§ 771.13(b)	(b)(2)
(b)(2)(i)	§ 771.21(a)(1)	(b)(2)(i)
(b)(2)(ii)	§ 771.13(b)(2)	(b)(2)(iii)
(b)(2)(iii)	§ 771.13(b)(3)	(b)(2)(iv)
(b)(3)		(b)(3)
(c)(1)	§ 771.15 intro	(c)(1)
(c)(2)	§ 771.15(a)	(c)(2)
(c)(3)	§ 771.15 (b) and (c)	(c)(3)
(c)(3)(i)	§ 771.15(c)(2)	(c)(3)(i)
(c)(3)(ii)	§ 771.15(c)(2)	(c)(3)(ii)
(c)(3)(iii)		(c)(3)(iii)
(c)(3)(iv)		(c)(3)(iv)
(d)(1)	§ 771.17 intro	(d)(1)
(d)(2)	§ 771.17 intro	(d)(2)
(d)(2)(i)	§ 771.17(a)	(d)(2)(i)
(d)(2)(ii)	§ 771.17(b)	(d)(2)(ii)
(d)(2)(iii)	§ 771.17(c)	(d)(2)(iii)
(d)(2)(iv)	§ 771.17(d)	(d)(2)(iv)
§ 773.12	§ 770.12 intro and (c)	
§ 773.13:		§ 773.13:
(a)(1)	§ 786.11(a)	(a)(1)
(a)(1)(i)	§ 786.11(a)(1)	(a)(1)(i)
(a)(1)(ii)	§ 786.11(a)(2)(i, ii and iv)	(a)(1)(ii)
(a)(1)(iii)	§ 786.11(a)(3)	(a)(1)(iii)
(a)(1)(iv)	§ 786.11(a)(4)	(a)(1)(iv)
(a)(1)(v)	§ 786.11(a)(5)	(a)(1)(v)
(a)(1)(vi)	§ 786.13(g)	(a)(1)(iv)
(a)(2)	§ 786.11(d)(1–2)	(a)(2)
(a)(3)	§ 786.11(b)(1–4)	(a)(3)
(a)(3)(i)	§ 786.11(c)(1–3)	(a)(3)(i)
(a)(3)(ii)	§ 786.11(c)(4)	(a)(3)(ii)
(b)(1)	§ 786.12(a) and (b)	(b)(1)
(b)(2)	§ 786.13(a)	(b)(2)
(b)(3)(i–ii)	§§ 786.12(c) and 786.13(b)(1–2)	(b)(3)(i–ii)
(c)(i)(i–iii)	§ 786.14(a)(1–3)	(c)(1)(i–iii)
(c)(2)(i–iv)	§ 786.14(b)(1–4)	(c)(2)(i–iv)
(c)(3)	§ 786.14(c)	(c)(3)
(c)(4)	§ 786.14(d)	(c)(4)
(d)(1)	§ 786.15(a)	(d)(1)
(d)(2)	§ 786.15(a)(1)	(d)(2)
(d)(3)(i–ii)	§ 786.15 (a)(2–3) and (b)	(d)(3)(i–iii)
(d)(3)(iii)		
§ 773.15:		§ 775.15:
(a)(1)	§§ 786.17(a)(1) and 786.23(b)(1)(ii)	(a)(1)
(a)(2)		(a)(2)
(b)(1)	§ 786.17(c)	(b)(1)
(b)(1)(i)	§ 786.17(c)(1)	(b)(1)(i)
(b)(1)(ii)	§ 786.17(c)(2)	(b)(1)(ii)
(b)(2)		§ 773.21(a)(1)(ii)
(b)(3)	§ 786.17(d)	(b)(2)
(c)	§ 786.19 intro	(c)
(c)(1)	§ 786.19(a)	(c)(1)
(c)(2)	§ 786.19(b)	(c)(2)
(c)(3)(i)	§ 786.19(d)(1–2)	(c)(3)(i)
(c)(3)(ii)	§ 786.19(d)(3)	(c)(3)(ii)
(c)(4)	§ 786.19(f)	(c)(4)
(c)(5)	§ 786.19(c)	(c)(5)
(c)(6)	§ 786.21 (a)(1) and (a)(1)(i)	
(c)(7)	§ 786.19(h)	(c)(7)
(c)(8)	§ 786.19(i)	(c) (6) and (8)
(c)(9)	§ 786.19(m)	(c)(9)
(c)(10)	§ 786.19(o)	
(c)(11)	§§ 786.19(d)(3) and 761.11(g)	
(d)	§ 786.17(b)	(d)
§ 773.17:		§ 773.17:
Intro		Intro

Final Part 773

Final rule	Previous rule	Proposed rule
(a)	§ 786.27(c)	(a)
(b)	§§ 786.27(a) and 771.19	(b)
(c)	§ 771.19	(c)
(d)	§ 786.27(b)	(d)
(d)(1)	§ 786.27(b)(1)	(d)(i)
(d)(2)	§ 786.27(b)(2)	(d)(ii)
(e)(1–3)	§ 786.29(a)(1–3)	(e)(1–3)
(f)		
(g)	§ 786.21(a)(1–2)	
§ 773.19:		
(a)	§ 786.17(b)	§ 773.15(a)(3) and (d)
(b)(1)	§ 786.23.(c)	§ 773.15(a)(4)
(b)(2)	§ 786.23(f)	§ 773.15(a)(4)
(b)(3)	§ 786.23(e)(1)(ii)	§ 773.15(a)(5)
(c)	§ 786.25(a)(1–2)	§ 773.19(b)
(d)	§§ 788.13(a) and 786.19 intro and (a)	§ 773.19(a)
(e)(1)	§ 786.25(b)(1)	§ 773.19(c)(1)
(e)(2)(i)	§ 786.25(b)(2)(i)	§ 773.19(c)(2)(i)
(e)(2)(ii)	§ 786.25(b)(2)(ii)	§ 773.19(c)(2)(ii)
(e)(3)	§ 786.25(b)(3)	§ 773.19(c)(3)
(e)(4)	§ 786.25(b)(4)	§ 773.19(c)(4)

Final Part 774

§ 774.1	§§ 788.1–788.3	§ 773.1
§ 774.10		§ 773.10
§ 774.11:		
(a)	§ 788.11(a)(1)	§ 773.23(a)
(a)(1)	§ 788.11(a)(2)	§ 773.23(a)(1)
(a)(2)	§ 788.11(a)(1)	§ 773.23(a)(2)
(a)(3)	§§ 788.11(a)(1) and 785.16(e)	§ 773.23(a)(3)
(b)	§ § 788.11(b) and 788.12(a)(2)	§ 773.23(b)
(c)	§ 788.11 (c) and (d)	§ 773.23(c)
(d)	§ 786.25(c)	§ 773.23(d)
§ 774.13:		
(a)		§ 773.25(a)
(b)(1)	§§ 788.12 (c), (b)(1) and 771.21(b)(3)	§ 773.25(b)(i)
(b)(2)	§ 788.12(b)(2)	§ 773.25(b)(ii)
(c)	§ 788.12(c)	§ 773.25(c)
(d)	§ 788.12(d)	§ 773.25(d)
§774.15:		
(a)	§ 788.13 (a) and (b)	§ 773.27(a)
(b)(1)	§ 771.21(b)(2)	§ 773.27(b)(1)
(b)(2)	§ 788.14(a)	§ 773.27(b)(2)
(b)(2)(i)	§ 788.14(a)(1)	§ 773.27(b)(2)(i)
(b)(2)(ii)	§ 788.14(a)(3)	§ 773.27(b)(2)(ii)
(b)(2)(iii)	§§ 788.16(a)(4) and 788.14(b)(4)	§ 773.27(b)(2)(iii)
(b)(2)(iv)	§ 788.14(a)(2)	§ 773.27(b)(2)(iv)
(b)(2)(v)	§ 788.16(a)(5)	§ 773.27(b)(2)(v)
(b)(3)	§ 788.14(b)(1)	§ 773.27(b)(3)
(b)(4)	§ 788.14(a)(1) and (b)(2)	§ 773.27(b)(4)
(c)(1)	§ 788.16(a)	
(c)(1)(i)	§ 788.16(a)(1)	§ 773.27(c)(1)(i)
(c)(1)(ii)	§ 788.16(a)(2)	§ 773.27(c)(1)(ii)
(c)(1)(iii)	§ 788.16(a)(3)	§ 773.27(c)(1)(iii)
(c)(1)(iv)		§ 773.27(c)(1)(iv)
(c)(1)(v)	§ 788.16(a)(4)	§ 773.27(c)(1)(v)
(c)(1)(vi)	§ 788.16(a)(5)	§ 773.27(c)(1)(vi)
(c)(2)	§ 788.16(b)	§ 773.27(c)(2)
(c)(3)	§ 788.14(b)(3)	§ 773.27(c)(3)
(d)	§ 788.15	§ 773.27(d)
(e)	§ 788.16(c)	§ 773.27(e)
(f)	§ 788.16(d)	§ 773.27(f)
§774.17:		
(a)	§ § 788.17 intro and 788.18(a)(3)	§ 773.29(a)
(b)	§ 788.18(a)	§ 773.29(b)
(b)(1)	§ 788.18(a)(2)	§ 773.29(b)(2)
(b)(1)(i)	§ 788.18(a)(2)(i)	§ 773.29(b)(2)(i)
(b)(1)(ii)		§ 773.29(b)(2)(ii)
(b)(1)(iii)	§ 788.18(a)(2) (iii) and (iv)	§ 773.29(b)(2)(iii)
(b)(2)	§ 788.18(b)(1)	§ 773.29(b)(3)
(b)(3)	§ 788.18 (a)(1) and (c)(2)	§ 773.29(b)(1)
(c)	§ 788.18(b)(2)	§ 773.29(c)
(d)	§ 788.18(c)	§ 773.29(d)
(d)(1)	§ 788.18(c)(1)	§ 773.29(d)(1)
(d)(2)	§ 788.18(c)(2)	§ 773.29(d)(2)
(d)(3)	§ 788.18(c)(1)	§ 773.29(d)(3)
(e)(1)	§ 788.11(c)	
(e)(2)		
(f)	§ 788.18(c)(3)	§ 773.29(e)

Final Part 775

§ 775.1	§ 787.1	§ 773.1
§ 775.11:		
(a)	§ 787.11(a)	§ 773.21(a)
(b)(1)	§ 787.11(b)(1)	§ 773.21(a)(1)(i)
(b)(2)	§ 787.11(b)(2)	§ 773.21(a)(1)(ii)
(b)(2)(i)	§ 787.11(b)(2)(i)	§ 773.21(a)(1)(ii)(A)
(b)(2)(ii)	§ 787.11(b)(2)(ii)	§ 773.21(a)(1)(ii)(B)

Final Part 775

Final rule	Previous rule	Proposed rule
(b)(2)(iii)	§ 787.11(b)(2)(iii)	§ 773.21(a)(1)(ii)(C)
(b)(2)(iv)	§ 787.11(b)(2)(iv)	§ 773.21(a)(1)(ii)(D)
(b)(3)(i–iii)	§ 787.11(b)(3)(i–iii)	§ 773.21(a)(1)(iii)(A–C)
(b)(4)	§ 787.11(b)(4)	§ 773.21(a)(1)(iv)
(b)(5)	§ 787.11(b)(5)	§ 773.21(a)(1)(v)
(c)	§ 787.11(c)	§ 773.21(a)(2)
§ 775.13:		
(a)	§ 787.12(a)	§ 773.21(b)
(a)(1)	§ 787.12(a)(1)	§ 773.21(b)(1)(i)
(a)(2)	§ 787.12(a)(2)	§ 773.21(b)(1)(ii)
(b)	§ 787.12(b)(1)	§ 773.21(b)(2)
(c)	§ 787.12(b)(2)	§ 773.21(b)(3)

Final Part 777

§ 777.1	§§ 771.1 and 771.2	§ 775.1
§ 777.10		§ 775.10
§ 777.11:		
(a)(1)	§ 771.23(b)	§ 775.11(a)(1)
(a)(2)	§ 771.23(b)	§ 775.11(a)(2)
(a)(3)	§ 771.23(a)	§ 775.11(a)(3)
(b)	§ 771.23(b)	§ 775.11(b)
(c)	§ 771.27	§ 775.11(c)
§ 777.13:		
(a)	§ 771.23(c)(1–3)	§ 775.13(a)
(b)		§ 775.13(b)
§ 777.14:		
(a)	§ 771.23(e)(1)	
(b)	§ 771.23(e)(2)	
(b)(1)	§ 771.23(e)(2)(i)	
(b)(2)	§ 771.23(e)(2)(ii)	
(b)(3)	§ 771.23(e)(2)(iii)	
(b)(4)	§ 771.23(e)(2)(iv)	
§ 777.15:		
Intro	§ 771.23(a)	§ 775.15 intro
(a)	§ 771.23(a)	§ 775.15(a)
(b)	§ 771.23(a)	§ 775.15(b)
§ 777.17	§ 771.25	§ 775.17

Final Part 778

§ 778.1	§§ 778.1, 778.2, 778.4, 778.11 and 782.1–782.11	§ 778.1
§ 778.10		§ 778.10
§ 778.13:		§ 778.13:
(a)	§§ 778.13(b) and 782.13(b)	(a)
(b)	§§ 778.13(a)(1, 5 and 6) and 782.13(a)(1, 5 and 6)	(b)
(c)(1)	§§ 778.13 (b)(1–2) and (c) and 782.13 (b)(1–2) and (c)	(c)(1–2)
(c)(2)	§§ 778.13 (b)(3) and 782.13 (b)(3)	(c)(3)
(d)	§§ 778.13(d) and 782.13(d)	(d)
(e)	§§ 778.13(a)(2–4) and 782.13(a)(2–4)	(e)
(f)	§§ 778.13(e) and 782.13(e)	(f)
(g)	§§ 778.13(f) and 782.13(f)	(g)
(h)	§§ 778.13(g) and 782.13(g)	(h)
§ 778.14		§ 778.14:
(a)	§§ 778.14(a) and 782.14(a)	(a)
(a)(1)	§§ 778.14(a)(1) and 782.14(a)(1)	(a)(1)
(a)(2)	§§ 778.14(a)(2) and 782.14(a)(2)	(a)(2)
(b)	§§ 778.14(b) and 782.14(b)	(b)
(b)(1)	§§ 778.14(b)(1) and 782.14(b)(1)	(b)(1)
(b)(2)	§§ 778.14(b)(2) and 782.14(b)(2)	(b)(2)
(b)(3)	§§ 778.14(b)(3) and 782.14(b)(3)	(b)(3)
(b)(4)	§§ 778.14(b)(4) and 782.14(b)(4)	(b)(4)
(b)(5)	§§ 778.14(b)(5) and 782.14(b)(5)	(b)(5)
(c)	§§ 778.14(c) and 782.14(c)	(c)
(c)(1)	§§ 778.14(c)(1) and 782.14(c)(1)	(c)(1)
(c)(2)	§§ 778.14(c)(2) and 782.14(c)(2)	(c)(2)
(c)(3)	§§ 778.14(c)(3) and 782.14(c)(3)	(c)(3)
(c)(4)	§§ 778.14(c)(4) and 782.14(c)(4)	(c)(4)
(c)(5)	§§ 778.14(c)(5) and 782.14(c)(5)	(c)(5)
§ 778.15:		§ 778.15:
(a)	§§ 778.15(a) and 782.15(a)	(a)
(b)(1)	§§ 778.15(b)(1) and 782.15(b)(1)	(b)(1)
(b)(2)	§§ 778.15(b)(2) and 782.15(b)(2)	(b)(2)
(b)(3)	§§ 778.15(b)(3) and 782.15(b)(3)	(b)(3)
(c)	§§ 778.15(c) and 782.15(c)	(c)
§ 778.16:		§ 778.16:
(a)	§§ 778.16(a) and 782.16(a)	(a)
(b)	§§ 778.16(b) and 782.16(b)	(b)
(c)	§§ 778.16(c) and 782.16(c)	(c)
§ 778.17:		§ 778.17:
(a)	§§ 778.17(a) and 782.17(a)	Intro
(b)	§§ 778.17(b) and 782.17(b)	(a)
(b)(1)	§§ 786.25(a)(1)	(b)
(b)(2)	§§ 786.25(a)(2)	
§ 778.18	§§ 778.18 and 782.18	§ 778.18
§ 778.21	§§ 778.21 and 782.21	§ 778.21
§ 778.22		§ 778.22

An additional table below shows the changes made to the previous permitting rules and to what sections some of their provisions have been moved.

Previous rule and Changes

Part 770

770.1—removed; part of § 773.1.
770.2—removed.
770.4—removed.
770.5—removed; definitions in § 701.5.
770.6—removed.
770.11—removed.
770.12—removed; intro and (c) in § 773.12.

Part 771

771.1—removed; part of §§ 773.1 and 777.1.
771.2—removed; part of § 777.1.
771.11—removed; provisions in § 773.11(a).
771.13—removed; provisions in § 773.11(b).
771.15—removed; provisions in § 773.11(c).
771.17—removed; provisions in § 773.11(d).
771.19—removed; provisions in § 773.17(b) and (c).
771.21—removed; provisions in §§ 773.11(b)(2)(i), 774.13(b)(1) and 774.15(b)(1).
771.23—removed; provisions in §§ 777.11–777.15.
771.25—removed; provisions in § 777.17.
771.27—removed; provisions in § 777.11.
Part 776—revised in another rulemaking for coal exploration.

Part 778

778.1—revised.
778.2—removed; included in § 778.1.
778.4—removed; included in § 778.1.
778.11—removed; included in § 778.1.
778.13—revised.
778.14—revised.
778.15—revised.
778.16—revised.
778.17—revised.
778.18—revised.
778.19—removed.
778.20—removed.
778.21—revised.
Part 779—revised by individual sections in other rulemaking.
Part 780—revised by individual sections in other rulemakings.

Part 782

782.1—removed; part of § 778.1.
782.2—removed; part of § 778.1.
782.4—removed; part of § 778.1.
782.11—removed; part of § 778.1.
782.13—removed; provisions in § 778.13.
782.14—removed; provisions in § 778.14.
782.15—removed; provisions in § 778.15.
782.16—removed; provisions in § 778.16.
782.17—removed; provisions in § 778.17.
782.18—removed; provisions in § 778.18.
782.19—removed.
782.20—removed.
782.21—removed; provisions in § 778.21.
Part 783—revised by individual sections in other rulemakings.
Part 784—revised by individual sections in other rulemakings.
Part 785—revised by individual sections in other rulemakings.

Part 786

786.1—removed; part of § 773.1.
786.2—removed;
786.4—removed;
786.5—removed; definitions in § 701.5.
786.11—removed; provisions in § 773.13.
786.12—removed; provisions in § 773.13.
786.13—removed; provisions in § 773.13.
786.14—removed; provisions in § 773.13.
786.15—removed; provisions in § 773.13.
786.17—removed; provisions in §§ 773.15 and 773.18.
786.19—removed; provisions in §§ 773.15 and 773.19.
786.21—removed; provisions in §§ 773.15 and 773.17.
786.23—removed; provisions in § 773.19.
786.25—removed; provisions in §§ 773.19, 774.11(d) and 778.17.
786.27—removed; provisions in § 773.17.
786.29—removed; provisions in § 773.17.

Part 787

787.1—removed; part of § 775.1.
787.2—removed.
787.11—removed; provisions in § 775.11.
787.12—removed; provisions in § 775.13.

Part 788

788.1—removed; part of §§ 774.1 and 773.1.
788.2—removed; part of § 774.1.
788.3—removed; part of § 774.1.
788.5—removed; definitions in § 701.5.
788.11—removed; provisions in §§ 774.11 and 774.17.
788.12—removed; provisions in §§ 774.11 and 774.13.
788.13—removed; provisions in §§ 773.19 and 774.15.
788.14—removed; provisions in § 774.15.
788.15—removed; provisions in § 774.15.
788.16—removed; provisions in § 774.15.
788.17—removed; provisions in § 774.17.
788.18—removed; provisions in § 774.17.
788.19—removed.

II. Discussion of Rules Adopted and Responses to Comments

A. Part 701—Permanent Regulatory Program

Section 701.5 Definitions.

General Comments

Several proposed definitions, "applicant," "application," "complete and accurate application," and "administratively complete application," included the term "coal exploration." Several commenters felt that for consistency with Section 512 of the Act and the preamble to proposed Part 772, coal exploration as used in these definitions should refer only to those exploration activities where more than 250 tons of coal are to be removed. Other commenters suggested that the terms "applicant" and "application" should limit the concept of coal exploration to that which substantially disturbs the land in accordance with Section 512(a) of the Act. Another commenter felt that the term "applicant" should not refer to coal exploration permits but to exploration approval since the legislative history indicates that the concept of an exploration permit was deleted from the Act and shows that exploration is to be performed subject to the rules of OSM.

OSM agrees that the definitions should limit the term coal exploration as it applies to the applicant and application. As the legislative history shows (see 121 Congressional Record 6219, March 12, 1975), an applicant is a person applying for a permit. Exploration permits are only required if the person intends to remove more than 250 tons of coal or the exploration will occur on lands designated as unsuitable for surface coal mining operations. This is explained in regard to final § 772.12 of the revised coal exploration rules. OSM is therefore adding the phrase "where required" to the definitions of "applicant," "application," "administratively complete application," and "complete and accurate application" to clarify that an exploration permit is not needed in every instance.

OSM disagrees with the commenter who stated that an exploration permit connot be required under the Act. OSM

notes that Section 512 of the Act is entitled "Coal Exploration Permits," and Section 512(d) of the Act refers specifically to "an exploration permit."

The use of the phrase "coal exploration which substantially disturbs the land" is explained in the preamble to the coal exploration rule. Generally, a permit is not needed for exploration where less than 250 tons of coal will be removed. Instead, when removing less than 250 tons, a notice is required when the land may be substantially disturbed. Under the Federal regulations, this notice is not required to be part of an approval process. It is simply a notification to the regulatory authority describing the proposed exploration and associated reclamation. The basis for this notification and the determination of what activity constitutes substantial disturbance is made by the regulatory authority. For further discussion of these concepts see the final coal exploration rules (FR 40622, September 8, 1983).

Administratively Complete Application and Complete and Accurate Application

Two new definitions were proposed to replace the definition of "complete application," which was located in previous § 770.5. These are "administratively complete application" and "complete and accurate application."

To be considered an "administratively complete application," an application must contain all the information necessary to begin the processing of the permit application by the regulatory authority and to initiate public review. Thus, a review to determine that the application is administratively complete will require, at a minimum, a survey of the application to determine whether there is sufficient data or material in response to each regulatory requirement to allow the administrative and public review process to proceed. This review will not be cursory, but will be a review to determine if additional material will be needed prior to public review and technical analysis by the regulatory authority. It is necessary that the public and technical reviewers have sufficient information in the application to be able to identify potential concerns associated with the mine. For example, a permit application would not be administratively complete if it simply stated that there would be no hydrologic impact. Rather, it must provide, as required by the Act and the regulations, the appropriate supporting hydrologic information.

This definition recognizes the inherent complexities involved in the permitting of a coal mine under the permanent regulatory program and allows some clarification or supplementation of material in the application prior to approval. In fact, such supplemental information is often necessary to ensure adequate consideration and disposition of public comments. Under previous § 786.11(a), applicants were required to place newspaper advertisements upon the filing of complete permit applications. In practice, however, the previous rule was not strictly applied and the comment period was not started anew each time additional information was submitted to the regulatory authority following the filing of the application. The final definition of an "administratively complete application" recognizes these practical realities, while ensuring that each regulatory requirement is addressed in sufficient detail initially to provide for meaningful regulatory authority and public review of the application.

A "complete and accurate application" will contain all the information needed to issue a permit. Thus, a review to determine that the application is "complete and accurate" will require an examination and evaluation of all data and material in the application to determine whether all of the regulatory requirements are satisfied and all the program requirements are met as required by Section 510 of the Act. A "complete and accurate application" could include information resulting from an informal conference or hearing and other information determined as a result of the public participation process which will become part of the record concerning the permit application.

Most of the comments received on the proposed definitions of "administratively complete application" and "complete and accurate application" were favorable. Many commenters thought that the new definitions were a reasonable approach to application problems, that they are proper definitions, that they reduce unnecessary paperwork, and that they reduce applicant uncertainty and confusion associated with the permit application submission and approval process. Several commenters pointed out that these definitions recognize inherent complexities in permitting and the realities of permit application preparation and submittal. OSM agrees with these assessments of the effects of the rules adopted.

OSM also received some negative comments on these definitions. One commenter stated that the definition of an administratively complete application is not sufficient to statisfy Section 502(d) of the Act. The commenter said that an application must not merely address application requirements, but must statisfy those requirements. Page 91 of House Report 95–218 (95th Cong., 1st sess., 1977), was cited as indicating that Congress required an application to be complete and accurate. The commenter felt that the proposal would force the public to exercise their rights of review over a skeletal permit application that is less than complete, thereby "chilling" public involvement. The commenter also believed that the proposed definitions conflict with proposed § 773.15.

OSM disagrees. First, Section 502(d) of the Act does not establish general requirements for permit processing. It establishes the special permitting procedures to be followed during the transition from the interim to the permanent regulatory program. Sections 507 and 508 of the Act, not Section 502(d) of the Act, set the requirements for what must be included in a permit application. Further, Section 502(d) of the Act refers to an "application," not a "complete application." In reviewing the cited legislative history, there is also no mention of a "complete application." The page cited does refer to experience showing the need for a thorough and comprehensive data base, and the bill delineates the type of information required in permit applications in Sections 507 and 508 of the Act. However, Contrary to the commenter's assertion, none of the sections of the Act dealing with content or public participation requirements for permit applications specify that an application must satisfy every detail of the application requirements for final approval upon initial submission.

Section 513 of the Act requires initiation of public participation upon the submission of an application; there is no mention of a need to satisfy all the permit approval and issuance requirements before public participation begins.

Congress intended that public participation in the permit review process would ensure "that the decisions and actions of the regulatory authority are grounded upon complete and full information." (H. Rept. 95–218, 95th Congress, 1st Sess., 1977, p. 89.) Thus, it is expected and intended that review of the permit application will identify some items which must be supplemented or amended before the permit may be approved.

The commenter's interpretation favoring a permitting process that did not include such a provision or a practical equivalent would render the public participation and review process virtually meaningless and unnecessarily

burdensome. It would require the process to start anew with the slightest revision based upon public or regulatory authority comments. Similarly, the applicant's participation in informal conferences would be detrimental to its interest in a speedy review, since any agreement to revise the permit based upon objections raised could require permit resubmission and a restart of the review process.

The concepts of a "complete" application and a "complete and accurate" application are contained in the Act in Section 510 (a) and (b)(1) and apply to the standards for permit approval by the regulatory authority after review. A "complete and accurate application" is thus a requisite for permit approval, not for the initiation of the review process. Under Section 513(a) of the Act, the public participation process begins with submission of an application. The final rule merely clarifies that this application must meet certain standards necessary for processing and public review. As stated in the preamble to the proposed rule (47 FR 27696; June 25, 1982), the permitting requirements must be "addressed in sufficient detail initially to provide for meaningful regulatory authority and public review of the application." Thus, it is not intended that an administratively complete application would be skeletal or "chill public involvement," but instead it will facilitate permit review as required under § 773.15.

Another commenter said the proposed changes reduce the public's ability to understand and participate by beginning the comment period before an operator is required to file a permit application with all required plans, maps, narratives, and supporting data.

This comment is rejected as inaccurate. The commenter apparently misunderstood the requirement for an administratively complete application. The applicant is required to have the plans, maps, narratives, and supporting data required by Sections 507 and 508 of the Act in the administratively complete application, so that a meaningful review by the public and technical reviewers for the regulatory authority may begin.

One commenter said that OSM now proposes to allow a company to make changes after the official public comment period has begun, making public review difficult as the coal company could keep adding new material to its application. The commenters asserted that meaningful public review requires a complete application which specifically describes the proposed operation and provides for complete public access to the permitting process, with citizen right to comment and agency responsibility to consider and respond to comments in a meaningful way.

OSM believes a company should be able to provide supplementary information to its application if it will clarify its proposal to the regulatory authority and public. The determination that an application is administratively complete prior to initiation of public participation and technical review should ensure that public review is meaningful since all regulatory requirements will be covered in the application. The regulatory and technological complexities of surface coal mining necessitate allowing applicants some flexibility to supplement or amend the application in response to comments raised during the review process. This should not decrease the ability of the public to respond but enhance the quality of the final product—a "complete and accurate application." Under this process public comments will often have a greater impact than under the previous rules because a regulatory authority may seek supplemental information from the applicant or a modification of the proposed operation without necessarily requiring that the comment period start anew.

Following the commenter's suggestion would mean that an applicant could not revise his application based upon comments without significant risk of having to resubmit the application and restart the review process. Thus, the applicant could have the incentive to resist changes in the application and reclamation plan regardless of how beneficial the changes may be.

Another commenter said that OSM's statement in the preamble to the proposal that it is virtually impossible to submit an application not needing clarification or supplementary material is evidence of the absurdity of the total program.

Unfortunately, the preamble statement about the likely need for most applications to be supplemented has been misconstrued; OSM merely intended to indicate the public and regulatory authority review would often identify portions of the application which require clarification or additional explanation. Reviewers may also have valid suggestions on how the proposed operation may be improved. This is the purpose of public and regulatory authority review and has therefore been provided for in these new definitions. OSM disagrees, however, that the need to supplement a permit based on comments indicates the permit process is absurd.

One commenter suggested a concept of "technically complete" permit application. The commenter believed that for purposes of individual permit review, public notice begins upon filing of the application which must be technically complete under Section 507 of the Act. According to the commenter, the initial review for technical completeness should occur promptly followed by the "substantive analyzing for adequacy of the information" in light of regulatory requirements.

OSM intends that these definitions and permit processing rules will generally operate in the manner described by the commenter. OSM does not believe there is any significant substantive distinction between the commenter's suggestion and the rules adopted. OSM has adopted the definition of administratively complete application because it more correctly covers all application requirements and not just technical requirements and because it is consistent with the Act.

Another commenter suggested a second less extensive public comment period should be allowed after receipt of a complete and accurate application.

This comment is rejected. The Act does not provide for a second comment period after the application is determined to be complete and accurate. Rather, the Act establishes a comprehensive process consisting of public comment, informal conferences, and hearings prior to permit approval. A party objecting to a final decision by the regulatory authority to approve or deny a permit may request administrative and judicial review of that decision.

Another commenter suggested that the term "complete and accurate application" be amended to specify that it includes all information that is necessary "to make a decision on permit issuance."

This comment is accepted. The suggested change recognizes that, although a permit must be complete and accurate prior to approval, a complete and accurate application would not necessarily guarantee issuance of a permit if the regulatory authority makes findings which would be the basis for the denial of a permit. The final rule also clarifies that the regulatory authority is the entity to determine when an application is "administratively complete" and "complete and accurate."

The final rule also differs from the proposal by dropping the word "permit" from the terms being defined and using the terms "administratively complete application" and "complete and accurate application" for editorial reasons. The terms will then be general

enough to apply to permits, revisions, renewals, and transfers, sales, and assignments of permit rights if specified in the individual rules relating to those subjects.

Applicant

The word "applicant" was located in previous § 770.5 and is derived from the definition in Section 701(16) of the Act. It is defined to mean any person seeking a permit from a regulatory authority to conduct coal exploration or surface coal mining and reclamation operations. No comments were received on the term "applicant," other than those in the previous discussion on coal exploration. The definition remains unchanged from that in the proposed rule and previous rules except that it is relocated from § 770.5 to § 701.5 since this definition is applicable to the entire permanent program and not just to Subchapter G.

Application

The word "application" was relocated from the previous § 770.5 to § 701.5 since this definition is also applicable to the entire permanent program and not just to Subchapter G. This term is defined to mean the documents and other information filed with the regulatory authority for issuance of permits (and revisions, renewals, etc.) for coal exploration or surface coal mining and reclamation operations.

No comments were received on the term, other than those in the previous discussion on coal exploration. OSM decided to clarify that this definition also applies to permits; revisions (significant or not); renewals; and transfers, assignments, or sales of permit rights. Individual regulations dealing with each of these actions specify which type of application applies.

Irreparable Damage to the Environment

Another phrase whose definition is changed from the definition in the previous rules is "irreparable damage to the environment," previously at § 786.5. The phrase "or has not been" (corrected by the applicant) has been eliminated and irreparable damage to the environment is defined as limited to damage that cannot be corrected by the applicant. This phrase was suspended from the definition by OSM on November 27, 1979, at 44 FR 67943. The phrase "or has not been" (corrected by the applicant) in the previous definition could include a wide variety of violations that should not be classified as "irreparable damage to the environment" since they could be reasonably corrected. Also, such language is unnecessary, since under final § 773.15(b)(1), a permit may not be issued, except under limited circumstances, if there exists any violation which has not been corrected. In addition, the conditions at the violating operation would be subject to cessation orders issued in accordance with §§ 840.13 and 843.11. Those sections cover the need for the applicant to abate the violation or to pursue a direct administrative or judicial appeal. For a permit to be issued, either of such courses of action must occur for the permit findings to be made by the regulatory authority. Therefore, the phrase "or has not been" need not be included in the final definition. The proposed definition of "irreparable damage to the environment" has also been modified to provide that such damage must have been caused in violation of the Act, the regulatory program or 30 CFR Chapter VII. This modification clarifies that the "laws, rules, or regulations" referenced in the proposed rules are those which pertain to surface coal mining and reclamation operations under the Act, these regulations and the regulatory program and are not unrelated requirements.

There were several comments concerning the definition of the phrase "irreparable damage to the environment." Some commenters simply concurred with the proposed change. One of them said that the definition recognized that some environmental effects are acceptable during coal recovery and proper planning allows mitigation of undesirable effects. OSM agrees with these assessments of the effects of the proposed rules.

Several commenters indicated the proposed definition should include the phrase "has not been corrected," as well as violations that "cannot be corrected." One commenter stated that Congress, in Section 510(c) of the Act, meant to include damage that would indicate an intent not to comply with provisions of the Act, and thus, the commenter believed the agency would be concerned with damage that could be, but has not been corrected, since that damage would indicate willful noncompliant behavior. Another commenter thought: (1) That the term was surely intended to allow the regulatory authority to prohibit mining by people who willfully disregard surface coal mining law and refuse to correct severe violations which they have caused, (2) that the point to the willful violation investigation was not that damage cannot be corrected but that persons are so irresponsible that they willfully refuse to take corrective measures, and (3) that if an operator corrects damage during litigation on the pattern of willful violations, the definition is not met and the regulatory authority could find that there was no demonstrated pattern of willful violations. Another commenter said that irreparable damage to the environment is not "only that damage which is unlawful that the regulations prohibit" and stated that, if a cessation order is authorized, the regulatory authority does not need to find a violation.

OSM agrees with the commenter that Congress meant to include consideration of noncompliance with provisions of the Act when reviewing permit applications under Section 510(c) of the Act. Noncompliant behavior would be discovered through § 773.15(b)(1), which would cover violations which could be, but have not yet been, corrected. However, the definition of "irreparable damage" is not intended to implement the outstanding violation requirements of Section 510(c) of the Act. There is no need then, to include correctable violations in the definition of irreparable damage to the environment, particularly when it is contrary to the commonly understood meaning of irreparable. The regulatory authority will be able to prohibit mining by people who disregard surface coal mining laws and refuse to correct any violations. In accordance with § 773.15(b)(1), such applicants may not be issued a permit. On the other hand, if the operator corrects such violations, he or she would not necessarily be precluded from obtaining a permit unless another required finding could not be made, *i.e.*, based on a demonstrated pattern of willful violations which result in irreparable damage to the environment exists. Such willful violations are those of such significance as to cause damage that cannot be corrected. This result is in accord with congressional intent.

Principal Shareholder

The definition of "principal shareholder" remains unchanged from the definition in previous § 770.5. Under the definition, "principal shareholder" means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock. No comments were received on the definition of "principal shareholder."

OSM has adopted this definition as proposed.

Property To Be Mined

The proposed definition of the term "property to be mined" in § 701.5 was identical to the definition in the previous rules located at § 770.5. Several comments were received that stated that the term "property to be mined" should be deleted and replaced with the term

"estate to be mined." The commenters believed that the term "estate to be mined" would be more correct legally and would eliminate the potentially confusing language that could be read as referring to "surface estates underneath lands" and "mineral estates on lands" which are within the permit area.

Other commenters believed that the definition of "property to be mined" should limit mineral estates to the coal which will be mined. They believed there is no need to include interests which would not be affected, such as oil and gas. Commenters also stated that Section 507(b)(1) of the Act limits OSM's authority to require application information to areas which are to be mined and thus argued that the proposed definition went beyond the Act's requirements.

OSM has decided to retain the term "property to be mined," rather than switching to "estates to be mined." "Property to be mined" is the language of Section 507(b)(1) of the Act. "Property" is a generally understood and recognized term. Section 507(b)(1) of the Act requires the legal owners of record of the property to be mined, including the surface and mineral rights, to be listed. The comment suggesting that mineral interests be restricted to the coal which will be mined is rejected. Nothing in Section 507(b)(1) of the Act indicates that the term should be so limited. Rather, other mineral estates which could be affected must be included.

Changes have been made to the definition to eliminate the confusion generated by the proposed phrase "on and underneath lands." The final definition requires inclusion of the estates within the permit area. The area covered by underground workings has been specifically included in the definition of "property to be mined" to reflect that the area overlying such workings will not necessarily be included in the permit area. See 48 FR 14814, April 5, 1983, for a discussion of the revision to the definition of the term "permit area."

Successor in Interest

The definition of "successor in interest" remains unchanged from the definition in the previous § 788.5. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights. No comments were received on the definition of "successor in interest." OSM has adopted this definition as proposed.

Transfer, Assignment, or Sale of Permit Rights

The definition of "transfer, assignment or sale of permit rights" remains unchanged from the definition in the previous rules, located in previous § 788.5. The definition of "transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority. No comments were received on this definition. OSM has adopted this definition as proposed.

Violation Notice

The definition of "violation notice" as proposed was the same as the definition located in previous § 770.5. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. One commenter suggested that the definition of "violation notice" should be modified to mean any written notification "from which enforcement action follows, from a governmental entity."

This comment was rejected as redundant because a violation notice is an enforcement action. OSM adopted the definition as proposed.

Willful Violation

The definition of "willful violation" located in previous § 786.5 was revised in proposed § 701.5 to parallel the definition in § 843.5 that was adopted at 47 FR 35637 (August 16, 1982).

Other than editorial changes, OSM has adopted this definition as proposed.

Section 701.11 Applicability.

Section 701.11(d) deals with the applicability of the interim and permanent regulatory program standards to existing structures. The final rule modifies this section by replacing the references to previous § 786.21 with references to final § 773.15(c)(6) to be in accord with these final rules. The final rule also changes the language in § 701.11(d)(2)(i) to be in accord with revised terminology used in the coal mine waste rule.

B. Part 773—Permitting Process

Section 773.1—Scope and purpose.

Final § 773.1 consolidates and replaces the "Scope" provisions in previous §§ 770.1, 771.1, 786.1, and 788.1 and the "Objectives" provisions in §§ 771.2, 786.2, 787.2, and 788.2. Final § 773.1 simply provides a general description of subject areas covered by Part 773, including obtaining and receiving permits; coordinating with other laws; public participation; conditions required for approval of permits; permit decision and notification and permit term and right of renewal.

Previous § 770.2, which set out the general objectives for the entire subchapter, was deleted. This provision was unnecessary and did not need to be stated in the final rules. Previous §§ 770.4, 770.12, 771.19, 786.4, and 788.3 outlined responsibilities under the regulatory program. Because the substance of these sections is included elsewhere, they are deleted as unnecessary. Responsibilities under the permitting requirements are not so complex that they need to be stated separately. The legal requirements for State programs are adequately covered by Subchapter C in Part 731 and the requirements and responsibilities to obtain and comply with permits are covered elsewhere in 30 CFR Chapter VII (e.g., see § 773.11).

One comment was received on proposed § 773.1. This comment suggested that this section provide minimum requirements. OSM agrees that these rules provide the minimum requirements for a permit processing system and that State regulatory authorities may add to them. OSM has added the word "minimum" in § 773.1 to clarify this point. OSM has added to § 773.1 the phrase "coordinating with other laws" in line with the retention in § 773.12 of the requirement of previous § 770.12 to coordinate with other statutes (this requirement had been proposed for deletion).

Section 773.10 Information collection.

This section codifies approvals by the Office of Management and Budget. No comments were received on this section.

Section 773.11 Requirements to obtain permits.

Section 773.11(a) All operations.

The requirements of previous § 771.11 are included in final § 773.11(a). This section requires a permanent program permit for each person operating a surface coal mining and reclamation operation on and after 8 months from the effective date of a permanent regulatory program within a State with the exception of certain initial program operations as set out in Paragraph (b). The final rule, by relying upon the effective date of the permanent program as the starting point for the 8-month period, clears up an ambiguity in the previous rule. The final rule recognizes that some State programs did not become effective immediately upon

Secretarial signature. In Section 506(a) of the Act, Congress intended to refer to the date the applicable regulatory program actually became effective, rather than any alternate date. The change also allows the rule to have a broader application, since the effective date includes Federal programs developed for a State, as well as approved State programs. In most instances, this clarification results in a difference of a few weeks.

The requirements of previous §§ 771.21(b)(1) and 771.21(a)(2) are deleted under the final rules as unnecessary and redundant of the requirements of final § 773.11(a).

Previous § 771.21(b)(1) merely required a person proposing to conduct a surface coal mining operation to file an application within a time set by the regulatory authority as sufficient to allow review of the application. Regulatory authorities may continue to set such times if desired. The prohibition in § 773.11(a) against mining prior to issuance of a permanent program permit should be sufficient incentive for applicants to file their applications early and will ensure that operations are not conducted without proper authorization.

Likewise, there is no need to specify that if any existing operation authorized under the initial program fails to meet the 2-month deadline for filing a permanent regulatory program permit application, then the application shall be treated as an application for a new operation (previous § 771.21(a)(2)). The requirements of § 773.11(b)(2) are clear that initial program operations may obtain the privilege of continuing to operate beyond the 8-month grace period only if they meet the requirements of that section, including submittal of an application within 2 months of the effective date of the permanent regulatory program. If that deadline is not met, then the operation will be treated as any other new application under the permanent regulatory program.

One commenter supported the changes proposed in § 773.11(a) and now adopted. Another commenter agreed with the proposed use of the term "effective date" rather than the date of the Secretary's approval.

Another commenter indicated that regulations must establish that continued operation after 8 months from the effective date of primacy (with limited exception for initial permitted operations) occurs only if there is a valid permit issued under the permanent program as required by Section 502(d) and 506(a) of the Act. The commenter stated that the proposed language would allow continued operation beyond the 8-month period under an initial program permit. The commenter also stated that previous § 771.21(a)(2) should not have been deleted, since that provision mandates the 2-month deadline for permit applications of Sections 502 and 506 of the Act which are not flexible. The commenter believed that the rules must implement the deadlines of the Act to provide notice that permit applications not filed by the proper time would not allow continued operation after 8 months.

OSM disagrees with the commenter's conclusion that § 773.11 would allow violations of the Act. Except under the limited circumstances acknowledged by the commenter, the proposed and final regulatory language correctly refers to a permit being required on and after 8 months after the effective date of the program. Specifying the time for filing such an application as was done in previous § 771.21(a)(2) is unnecessary since, by its very terms § 773.11(b) provides the only exceptions. Thus, the final rule provides that in order to operate on and after 8 months after State program approval, each surface coal mining and reclamation operation must either have obtained a valid permit issued under the permanent regulatory program or qualify, under Section 506(a) of the Act and final § 773.11(b), to continue to operate under the initial program until the permanent program permit has been initially approved or denied. Standards for qualifying to continue such operations are discussed in reference to § 773.11(b)(2) below.

One commenter believed statutory resolution was probably necessary to meet a 6-month deadline for review and approval of permits.

The rules as promulgated here should facilitate permit reviews in States and statutory resolution is not needed.

Section 773.11(b) Continuation of initial program operations.

Final § 773.11 (b)(1) and (b)(2) provide two circumstances under which an existing operation authorized under the initial regulatory program could continue to operate under the permanent regulatory program.

Section 773.11(b)(1).

Final § 773.11(b)(1) contains the requirements of the previous § 771.13(a), with minor editorial changes. Under final § 773.11(b)(1), when a State program receives final disapproval, including judicial review of the disapproval, existing surface coal mining and reclamation operations could continue in accordance with the initial program provisions and Section 502 of the Act until promulgation of a complete Federal program for the State. During this period, a State may not issue any new surface coal mining permits, but permits that lapse may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

Several commenters proposed to have the phrase, "within the specified permit area" deleted from § 773.11(b)(1) to reflect the scope and effect of a permit which lapses between State program disapproval and Federal program promulgation. They pointed out that Sections 502(f) and 504(d) of the Act, in describing which operations may continue, refer to a "permit" not "permit area." They believed that: (1) An operator can continue operating pursuant to a permit, even if it is beyond the permit area, (2) the Federal program promulgation will be a lengthy process and the operator should exercise his rights during the Federal program development process, (3) the deletion of the phrase "within the specified permit area" would prevent unjustly penalizing the operator for the regulatory authority's failure and would allow an operator to continue beyond permit boundaries if he ran out of coal.

OSM has not experienced any difficulty under the previous rule, which contained the same language. Since each state with current surface coal mining operations have received approval or conditional approval of their permanent programs, except Georgia and Washington which have Federal programs, OSM does not expect that any mining operations will become subject to this section. Therefore, no change, other than editorial changes, have been made to the final rule and it is adopted as proposed.

Section 773.11(b)(2).

Section 502(d) of the Act requires the regulatory authority to process and grant or deny permanent program permits within 8 months from the date of primacy for operators with an initial program permit who wish to continue to operate after the end of the 8-month period. However, Section 506(a) of the Act and § 773.11(b) recognize the possibility that this task may be unachievable in some States due to workload limitations and potential administrative delay in permit processing. As a result, the Act provides that certain operators may continue to operate after the 8-month period under their existing initial program permits.

Final § 773.11(b)(2) establishes requirements for continued operation under initial program permits after the implementation of the permanent

regulatory program. This section includes the requirements of previous §§ 771.13(b) and 771.21(a)(1). The final rule provides that any person authorized to conduct surface coal mining and reclamation operations under the initial regulatory program or under a permit issued or amended by the regulatory authority in accordance with the requirements of Section 502 of the Act, may conduct those operations beyond the 8-month period following permanent regulatory program approval, if certain conditions are met. The final rule represents a change from the previous rule by providing for the continuation of operations that were authorized to conduct mining under the initial regulatory program but which may not have been required to have a permit under the initial program. This change recognizes that some existing operations required to have permits under the permanent regulatory program may not have been required to have permits under the preexisting State initial regulatory program.

In accordance with Section 502(d) of the Act, final § 773.11(b)(2) establishes three requirements for the continuation of an initial program operation while the operator is awaiting approval of its permit application under the permanent program. These include that: (1) A permanent regulatory program permit application is filed within 2 months from the effective date of the permanent regulatory program, previously provided for in § 771.21(a)(1);

(2) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit, previously included in § 771.13(b) (2) and (3); the mining operations are conducted in compliance with the initial program authorization or permit and the requirements of the Act, the initial regulatory program, and applicable State statutes and regulations, previously included in § 771.13(b)(3). For clarification, it should be noted that reclamation, bonding, and bond release procedures of the State's initial program would continue to apply to such operations permitted under the initial program, regardless of whether that operation continues under the permanent program. These initial program activities could continue within the area covered by the initial program permit. Any new area not covered by the initial program permit could not be affected until a new permanent program permit covering that area was issued.

As discussed under § 773.11(b)(3), initial program permits can still be issued after the effective date of primacy as long as the application was received prior to such date. Such permitted operations would be treated like other continuing initial program operations. Thus, no operator would be penalized by delays in the initial program permit approval process.

One commenter supported all the changes made in proposed § 773.11(b)(2)(i).

Another commenter believed that § 773.11(b)(2)(i) exceeds the Act's requirements in allowing unpermitted initial program operations to continue during the permanent program without permit, bond, or compliance with Sections 515 and 516 of the Act. Section 506(a) of the Act was cited, and the commenter stated that the Act makes no provision for continued operation of "unpermitted but authorized" mining operations after 8 months. Likewise, it was asserted that Section 502(a) of the Act limits continued operation to holders of initial program permits issued pursuant to Section 502(a) of the Act. The commenter believed that operations not "regulated by the State" prior to the initial program cannot continue into the permanent program until 8 months from "primacy" without valid permanent program permits.

OSM does not agree with the commenter that final § 773.11(b)(2) exceeds the authority granted by the Act, but believes it follows the requirements of the Act. As the commenter noted, Section 506(a) of the Act allows a person to continue to conduct operations under a permit issued in accordance with Section 502 (a) of the Act beyond the 8 month period under certain conditions. Section 502 (a) and (b) of the Act limits its requirements that an operation obtain an initial program permit to operations on lands on which such operations are regulated by a State. Section 502(d) specifies that all operators of surface coal mines, whether or not they are required to have an initial program permit, must file an application for a permanent program permit not later than 2 months after approval of a regulatory program if they expect to operate on and after 8 months after approval. Congress intended all initial program operations to come under the same permitting provisions in the permanent program. Congress' intent in regard to this exception was expressed as follows: "The Committee did not want to force current operations to shut down simply because of administrative delay." (S. Rept. 95–128, 95th Cong., 1st Sess., 1977, p. 74.) It would be inequitable and contrary to this intent to deny some operators the privilege of continuing operations solely because they were not required to have a permit during the initial program. Thus, under § 773.11(b)(2) an operation may continue pursuant to the combined requirements of Sections 502(a) and 506(a) of the Act.

One commenter supported all the changes made in proposed § 773.11(b)(2)(ii), which required that a timely and administratively complete application be filed as a prerequisite to being allowed to continue operating beyond the 8-month period without first receiving a permanent program permit.

Another commenter complained about the change to requiring the filing of an "administratively complete application" rather than a "complete application" within 2 months from the effective date of primacy. The commenter believed that the application must contain all the information needed to meet the requirements of Sections 507, 508, and 509 of the Act and that since an administratively complete application must only "address" each requirement, the proposed rule is an invitation to delay. The commenter stated that the deletion of the requirement that the "complete application" for a permanent program permit be filed in a timely manner, so as to allow the regulatory authority to process and approve or deny an application within 8 months, invites interminable delay in processing of permanent program permits and favors last-minute filing of permits.

The commenter believed the Act is unambiguous in the requirement that operators seeking to operate after 8 months from primacy must: (1) have obtained a valid initial program permit, (2) have submitted a "complete" permanent program permit application within 2 months from program approval, and (3) have had a permit granted or denied within 8 months. The commenter quoted page 86 of House Report (95–218 95th Cong., 1st Sess., 1977) as follows: "Operators are required to obtain permits 8 months after approval of a State program." According to the commenter, the House emphasized that the 8-month deadline was for receipt of a decision on the permit, not the time for filing one. The commenter claimed that the section-by-section analysis of Section 506 stated "eight months after approval of a State Program of [sic] implementation of a Federal program, all operators must have *received a permit issued* in compliance with the Act under the requirements of this section." The commenter also cited the Senate Report as supporting this interpretation (S. Rept. 95–128, 95th Cong., 1st Sess., 1977, p. 74.)

The commenter believed OSM lacks any authority to waive the time frames in Sections 502(d) and 506 of the Act and

should require full compliance by all State programs. The commenter believed that the proposed rule waived the 2-month and 8-month deadlines without necessity and that the regulations should not be drafted to remedy a unique situation, in one particular State, that needs no remedy.

The commenter continued that the OSM proposal for an administratively complete application for a permit triggers public participation in § 773.13 and requires the public to review a skeletal parmit application. The commenter stated that Congress intended that complete and accurate permit applications be reviewed by both the agency and public. The commenter believed that the concept of an administratively complete application makes citizen participation a farce and makes a mockery of Section 513 of the Act and Congressional intent. The commenter suggested that the section should read "timely and complete permit application" not "timely and administratively complete permit application."

Futher explanation of the term "administratively complete application" can be found under the definition of the term in § 701.5. An administratively complete application for a permit would not be skeletal but would contain all information necessary to initiate processing and provide for public and technical review. An administratively complete application must address all the requirements in Sections 507 and 508 of the Act. These requirements are what the Act requires of an applicant at the time of submittal. Further information may need to be submitted if public and technical review indicates a need for such information. Sections 502(d), 506, 507, and 508 of the Act do not require, or even mention the concept of, a complete application. A complete application is required only at the end of the permit review process so that the regulatory authority possesses sufficient information to make an informed and rational decision on whether to issue or deny the permit. Section 510(a) of the Act requires the regulatory authority to make its decision based on a "complete mining application and reclamation plan," and Section 510(b)(1) of the Act addresses and "accurate and complete" application. OSM has chosen to define a "complete and accurate application" in § 701.5 of these rules. The concept of an "administratively complete application" has been added to clarify to operators that the application submitted must contain information relating to all the requirements of Sections 507 and 508 of the Act and the implementing rules in Subchapeter G.

Contrary to the commenter's assertion, Section 502(d) of the Act does not require that the application be complete or satisfy every detail of the application requirements upon initial submission to meet the 2-month deadline. The regulatory authority will need time to review appplications to make "administrative completeness" determinations. Consequently, OSM has decided not to require that an application be administratively complete at the end of the 2-month time. Therefore, proposed § 773.11(b)(2)(ii) is not adopted and § 773.11(b)(2)(i) simply utilizes the language of Section 506(a) of the Act and requires that an application be filed within the 2-month period. Additionally, the final rule deletes the requirement in previous § 771.13(b)(1) which allowed a person conducting surface mining and reclamation operations to continue beyond 8 months if a "timely" and complete application had been filed. The concept of "timely" is redundant in light of the 2-month filing period.

The rule is not an invitation to delay, but an approach to ensure quality review of permanent program permit applications without penalizing existing operations for administrative processing requirements. The provisions are in accord with the requirements of the Act. In conducting the reviews of permanent program permit applications for existing operations, the regulatory authority must, as a minimum, make a good faith effort to review the applications within the 8-month period and, if unsuccessful, must expeditiously complete the review after the end of the 8 months.

One commenter believed that § 773.11(b)(2)(ii) failed to provide adequate procedures and safeguards to ensure that premature "initial" administrative decisions will not cause irreparable economic harm to existing initial program operations. According to the commenter, the existing mines would be operating in complete or substantial compliance with all performance requirements (or be closed for noncompliance), and therefore there would be scarcely any compelling need to close such mines pending their appeals. Even if the initial decision is later reversed, the operation could be destroyed economically if it must close pending appeal.

The commenter suggested different permit review procedures for "existing" and "planned" mines. Existing mines, it was asserted, deserve more due process and must not be subjected to initial adverse decisions on the same grounds that would justify adverse decisions for planned mines. According to the commenter, an existing operation should not be given an initial adverse decision based on "insufficient data" or "unresolved questions" concerning the permit application, but as much time as is reasonably necessary to collect additional data should be allowed. If the regulatory authority and applicant disagree concerning the scope of required data, an interlocutory appeal should be granted on those disagreements. In no event should an initial permit denial be issued on anything less than a finding of unacceptable environmental effects.

OSM is sympathetic with the commenter's concern. However, Section 506(a) provides that mining may continue only until the "initial administrative decision" is rendered. Final § 773.11(b)(2)(ii) implements this requirement.

OSM disagrees that applications from existing operations should be reviewed on different grounds than future permanent program operations. Applications from both types of operations must be reviewed under the same provisions of the Act and regulations and the decisions on both must be based on the same grounds.

No comments were received on § 773.11(b)(2)(iii) which was proposed § 773.11(b)(2)(iv) and is similar to previous § 771.13(b)(3). This section is adopted as proposed with two editorial changes. The word "applicable" is added to clarify the reference to State statutes and the entire provision has been changed to the singular rather than the plural.

Section § 773.11(b)(3).

Final § 773.11(b)(3) was proposed as a new section which would clarify when initial program permits could be issued during the permanent program. The final rule allows the regulatory authority to issue initial program permits after the implementation of the permanent program only when the application was filed prior to the effective date of that permanent program. The final rule recognizes that an operator who has in good faith submitted an application for a permit under the initial program should not be penalized by rejection of that application solely due to the approval of the State's permanent regulatory program. An operator who receives an initial program permit under this provision will be treated as other initial program operators are for purposes of Section 506(a) of the Act and § 773.11(b). Such an operator will be allowed to conduct operations beyond the 8-month

period if he has met the requirements of Paragraph (b)(2) of this section. This procedure is an equitable method of treating those applicants who submitted applications under the initial program, the review process of which is interrupted by establishment of the permanent program. Such applicants expected to be authorized to mine, at least for some period, under the initial permit. The promulgation of the permanent program should not prevent the regulatory authority from issuing the initial program permit if a valid application was made during the initial program.

Although one commenter supported the change made by the addition of this section, another commenter found this section vague and confusing and believed that if OSM allows "clearing out" of initial permit applications, it must set certain conditions, as follows: (1) The application should be timely and complete, as implied by Section 502 of the Act. It asserted that preliminary applications filed before primacy cannot be followed by a full application after primacy, since filing does not satisfy Section 506(a) of the Act. A less than complete initial application should be rejected on filing, and then a complete permanent program application filed. (2) OSM should establish a reasonable time to process such applications so as not to dilute the ability to process permanent program applications. (3) The applicant must file in a timely fashion and the agency must reject last-minute applications not meeting substantive initial program requirements. (4) The commenter believed initial program applications not filed in a complete and timely manner should be processed and reviewed under approved permanent program procedures and standards and should not be allowed to continue beyond 8 months from the program's effective date without a permanent program permit.

Section 502 of the Act does not set any standards for timeliness or completeness of initial program permit applications. Instead, Section 502(a) of the Act states that no person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands regulated by a State unless he has obtained a permit from the State's regulatory authority. The specific provision of the Act, Section 502(b), which addresses when initial program permits may be issued, does not expressly preclude the issuance of such permits after the approval of a State program. Other situations are addressed, such as final disapproval of a State program or promulgation of a Federal program. However, the Act does not set a cutoff date for the issuance of initial program permits upon State program approval. Thus it is proper for OSM to determine that an application submitted during the initial program can and should be processed as would any other initial program permit application. The application should have all the information required for a permit under the initial program. An application returned as incomplete after primacy must be refiled as a permanent program permit application. Any additional requirements attendant to a permanent program permit application are not relevant until primacy, at which time the applicant would have to submit a permanent program permit application within 2 months to qualify for the § 773.11(b)(2) exception.

An operation with a permit issued in accordance with Section 502 of the Act must cease mining if at the end of the 8-month period, the requirements of Paragraph (b)(2) of this section are not met or the permittee does not yet have a permanent program permit.

Section 773.11(c) Continued operations under Federal program permits.

Final § 773.11(c) deals with continued operations under Federal program permits after approval of a superseding State program. This section is similar to previous § 771.15, with some editorial and organizational changes. Section 773.11(c)(1) provides that a permit issued under a Federal program shall be valid under any later State program approved by the Secretary. Section 773.11(c)(2) continues the provision that gives the Federal permittee the right to apply for a State permit to supersede the Federal permit. Previous § 771.15 (b) and (c) are revised in final § 773.11(c)(3). As rewritten, final § 773.11(c)(3) no longer requires the State regulatory authority to issue an order requiring compliance with additional requirements of the State program as previously required by § 771.15(c)(1). Rather, the final rule simply requires the regulatory authority to provide written notice to the permittee of any additional requirements, an opportunity for a hearing, an opportunity to resubmit the application in whole or in part, and a reasonable time to conform operations to the additional requirements.

No comments were received on proposed § 773.11(c), and OSM has adopted this section as proposed with minor editorial corrections.

Section 773.11(d) Continued operations under State program permits.

Final § 773.11(d) deals with continued operations under State programs permits under a superseding Federal program. The final rule parallels previous § 771.17 with minor editorial and organizational changes.

Section 773.11(d)(1).

Section 773.11(d)(1) provides that a permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

No comments were received on proposed § 773.11(d)(1). The final rule is adopted substantially as proposed with a revision indicating that this section applies to both approved and conditionally approved State programs since conditional approval confers on a State authority to issue permanent program permits.

Section 773.11(d)(2).

Section 773.11(d)(2) requires the Director of OSM, immediately following promulgation of a Federal program, to review permits issued under a previously approved State program to see that requirements of the Act, 30 CFR Chapter VII, and the Federal program are not violated. This section also provides procedures for the Director to follow is the permit is found to have been granted contrary to the requirements of the Act.

One commenter pointed out that in proposed § 773.11(d)(2) the discretionary term "may" was used even though the Secretary or Director has a mandatory duty to review all permits issued under a previously approved but superseded State program as required by Section 504(d) of the Act. OSM agrees with the comment and has replaced "may" with "shall" in final § 773.11(d)(2). Otherwise, § 773.11(d)(2) remains unchanged from the proposed section with one editorial correction to clarify that it is the State permits which are to be reviewed.

Section 773.12 Regulatory coordination with requirements under other laws.

Several comments were received requesting OSM to include previous § 770.12 (b) and (c), requiring coordination of the permit process with permits issued under other Federal statutes.

Commenters believed the regulatory authority should be required to coordinate its permit review process with the statutes and agencies listed in previous §§ 770.12 (b) and (c). One commenter stated the regulatory authority should coordinate the review

and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended, the Migratory Bird Treaty Act of 1918, as amended, the National Historic Preservation Act of 1966, the Bald Eagle Protection Act, as amended, and the Fish and Wildlife Coordination Act, as amended. The commenter believed it is essential to coordinate with these acts to protect fish and wildlife resources and threatened and endangered species and to avoid adverse impacts on these resources. Another commenter stated that the permit review process conducted by the regulatory authority must be coordinated to ensure adequate protection of various resources whose protection is governed by another agency. He believed that maximum coordination to eliminate duplication and to assure coherency is the key. The commenter also stated that the Act requires coordination between the State permit review and other laws irrespective of whether they require permits or not. The commenter noted that the Act is replete with references to other agencies and laws to be considered and referenced in the review process.

OSM agrees that the permit review and approval process should be coordinated with actions taken to comply with other Federal statutes. OSM has, therefore, retained the requirements of previous § 770.12(c) in these final rules as § 773.12 and added the Migratory Bird Treaty Act and Bald Eagle Protection Act as suggested by the commenter. The requirements in previous § 770.12 (a) and (b) for coordination with the permit processes under other Federal laws have not been included in final § 773.12 because the rules for approval of State programs in § 731.14(g)(9) require such coordination and all Federal or State governmental agencies with applicable permit issuing authority will be notified under § 773.13(a)(3)(ii).

Section 773.13 Public participation in permit processing.

Final § 773.13 provides requirements for processing permits and for public participation in the review of permit applications.

Section 773.13(a)(1).

Final § 773.13(a)(1) includes the public notice requirements of previous § 786.11(a). The final rule adds language to make it clear that public notice of applications for significant revisions of permits and renewals is required. The final rule also provides that a copy of the advertisement must be submitted to the regulatory authority.

One commenter stated that this section seemed to ask for four publications of the advertisement but required a copy of only one advertisement. The commenter suggested the language should be changed to require submission of a copy of the "proposed" advertisement to the regulatory authority and that this would clarify that this paragraph requires only that the content of the advertisement be submitted with the initial application. The proof of four publications would still be submitted under § 778.21.

Another commenter opposed changes to this section when read with the new definition of "administratively complete application." One option the commenter seemed to propose would be to require a 2-week public notice upon submittal and a 4-week notice once the application was determined to be complete and accurate.

OSM agrees with the commenter that the regulatory language concerning the submission of the advertisement may be confusing. The suggested addition of the word "proposed", however, would not alleviate the confusion since it could be interpreted to allow the applicant to make substantive changes in the advertisement after it was submitted to the regulatory authority. Instead, OSM has added the phrase "as it will appear in the newspaper" to clarify that only one copy showing the content of the public notice is required.

The suggestion of an initial 2-week public notice followed by a 4-week notice is rejected. The Act provides no basis for a second comment period at the end of the regulatory authority's review. OSM's final language is in accord with Section 513(a) of the Act.

The final rule adds the term "permit renewal" to this section to clarify the applicability of the section to renewals, as proposed under proposed § 773.27(b)(3).

Section 773.13(a)(1)(i).

Section 773.13(a)(1)(i) provides that the advertisement concerning an administratively complete application shall contain the name and business address of the applicant and is adopted as proposed. No comments were received concerning § 773.13(a)(1)(i).

Section 773.13(a)(1)(ii).

Section 773.13(a)(1)(ii) revises the description or map of the permit area which was required under previous § 786.11(a)(2) to streamline the regulatory language and emphasize that the description must be sufficient to enable local residents to readily identify the permit area. The regulatory authority will determine what will provide the most useful information. This does not exclude a legal description, if considered necessary or appropriate by the regulatory authority.

Several comments were received concerning the proposed use of the word "exact" to refer to the location and boundaries of the proposed permit area. Two commenters suggested deleting "exact" location from the advertisement. They believed it is impractical in a newspaper and that a general location should be sufficient to notify interested parties where the proposed permit area is located. Another commenter suggested deletion of the word "exact" and use of the statutory language "precise location." He believed OSM should clarify that this needs to be only "exact" enough to allow identification of the proposed permit area.

Other words commenters proposed for deletion in this section were "map" and "clearly," because the map may be reviewed with the copy of the permit application available for public inspection.

Commenters believed that the proposed description required under Sections 507(b) and 513 of the Act must contain at a minimum such locators as towns, rivers, streams, local landmarks, and roads, routes, streets, and distance measurements. They believed Congress demanded a newspaper notice that would "acquaint local residents with the location of the operation," as stated on page 92 of House Report 95-218 (95th Cong., 1st Sess., 1977). The commenter said that, according to this report, the requirement was designed in response to the committee's awareness of the severe difficulty which local people frequently experience in attempting to investigate the nature of impending surface mine operations. He believed that the proposal violated Congress' intent that OSM set the national minimum standards for State programs. The commenter stated that the States cannot require a legal description or any other information beyond that required in § 773.13, due to States having "no more stringent" clauses.

OSM has accepted the comment to use the language of the Act insofar as the word "exact" was concerned. Section 513(a) of the Act uses the word "precise," so the rule has been changed accordingly. Editorial changes were made to show clearly that this description or map must be sufficient to allow local residents to readily identify the permit area.

The word "map" was not deleted. The final rule does not require a map, but

allows the applicant to use a map or a description. Since a map is occasionally more easily understood by local residents than a legal description, the final rule continues to allow use of a map to describe the proposed permit area. The purpose of including a map or description in the advertisement is to allow members of the public to determine where the proposed operation will be located, so they may decide if they want to review the entire application. Thus, the map included in the application would not serve the same purpose. Similarly, the maps required by Section 507(b) of the Act do not need to be the same maps used in the advertisement because the permit map serves a different purpose than the advertisement.

The term "clearly" was not deleted because it is considered important that any description or map be "clear" to meet the intent of Section 513 of the Act.

The comment suggesting that various "locators" be mandated in the final rule has not been accepted since Section 513(a) of the Act does not specifically identify how the location is to be described and such details are more appropriately determined by the regulatory authority based on local conditions. OSM agrees that the purpose of advertising the location of the proposed operation is to allow local residents to investigate impending surface coal mining operations. For this reason, the regulatory language is phrased so that the standard which the applicant must meet is to describe the location precisely enough to allow local residents to readily identify it. The appropriate landmarks or other identifiers cannot be specified in a nationally uniform rule since they will necessarily differ depending on the location of the proposed operation. The existence of "no more stringent" clauses in some State statutes is not persuasive. Such clauses merely indicate that in those States the regulatory authority will choose not to exercise the discretion given it under Section 505 of the Act. The final rule is sufficiently specific to meet the requirements of Section 513 of the Act. Further, the final rule allows the regulatory authority to specify "other information which would identify the location" if necessary or appropriate.

Several comments were received concerning the proposed deletion in § 773.13(a)(1) of the reference to the USGS 7.5-minute quadrangle map contained in previous § 786.11(a)(2)(iii). One commenter believed that this map reference and latitude-longitude coordinates must be required. The commenter thought that many regulatory authorities would not have discretion to require identification of the appropriate USGS map due to clauses in statutes requiring the State regulations to be "no more stringent" than those of OSM. The commenter believed that: (1) This map is a standard reference essential for interested individuals, and particularly agencies and local governmental authorities, to be able to locate the operation and reference it to the topography of the area, (2) its deletion does not provide adequate notice of the precise location of the proposed site required by Section 513(a) of the Act, (3) since the applicant must submit the information and reference to the USGS map in which the area referenced lies, the deletion affords no "relief" to the operator at the cost of interfering with citizen participation.

OSM disagrees with these comments. By requiring the advertisement to be sufficiently descriptive to ensure that local residents can readily identify the proposed permit area, the final rule assures that the advertisement serves its statutory role. If an agency needs a topographic map of the area, it will have access to the index and the maps.

Again, this rule allows the regulatory authority to require this information if it desires. The commenter is incorrect in stating that this map is required by Section 513(a) or that the applicant must submit the information and reference the map under Subchapter G. Section 513(a) of the Act requires the advertisement to include the precise location and boundaries of the land to be affected, which is what § 773.13(a)(1)(ii) requires. The operator does not need to provide other information, unless required by the regulatory authority.

Section § 773.13(a)(1)(iii).

Section § 773.13(a)(1)(iii) requires an advertisment to contain the location where a copy of the application is available to the public.

One commenter believed that the proposed phrase "public review" does not agree with the statutory language of Sections 507(b)(6) and 507(e), which requires that the application be available for "public inspection." The commenter believed the term "inspection" connotes opportunity for "less cursory" analysis of the permit application, which is consistent with Congressional intent to involve the public actively in all phases of regulatory activity, and cited pages 88–89 of House Report 95–218 95th Cong., 1st Session 1977.

OSM disagrees that either public "inspection" or public "review" would affect the allowable analysis of the application. Nevertheless, in response to the comment the final rule has been revised to use the language of the Act, which is "inspection."

Section 773.13(a)(1)(iv).

Proposed § 773.13(a)(1)(iv) would have provided that the advertisement must contain the name and address of the regulatory authority where written comments or requests for informal conferences may be submitted and omitted the word "objections," which was in previous § 786.11(a)(4).

One commenter suggested that the provision should be amended to "where written comments, objections, or requests . . ." in order to assure notice that the period for filing objections as well as comments has begun or will soon begin. The commenter believed that written comments and objections are two distinct terms.

OSM agrees with the comment and has included the word "objections" in the final rule, which is otherwise identical to the proposed rule.

Section 773.13(a)(1)(v).

Final § 773.13(a)(1)(v) is derived from previous §786.11(a)(5). This rule provides that if an applicant seeks to mine within 100 feet of the outside right-of-way of a public road or to relocate (or close) a road, a statement describing the road should be included in the advertisement concerning an administratively complete application. The final rule, however, no longer requires additional public notice regarding mining within 100 feet of the outside right-of-way of a public road or relocating a road if, under 30 CFR 761.12(d), public notice has already been given and a hearing has already occurred concerning the effect on the road. The previous rule, at §786.11(a)(5), required such information to be in the newspaper advertisement regardless of whether a hearing had already been held. The final rule eliminates the duplicative notice and hearing requirement where the necessary notice and hearing have already been provided in accordance with the program requirements.

Several comments were received on § 773.13(a)(1)(v). Several commenters approved of including notice to mine within 100 feet of public road with the initial, rather than a separate, advertisement.

Other commenters suggested deletion of the date and duration of road relocation because it is impractical to know this information at the time the

application is filed due to the flexibility of mining schedules.

Another commenter believed that: (1) The exception provided by this rule could be interpreted to say the hearing on road relocation for a prior permit would suffice for a different relocation for subsequent permits, (2) if a road is relocated to a different place, an opportunity for a new public hearing should be provided, and (3) since the proposed rules of § 761.12(d) allow for closing of roads, so should Paragraph (a)(1)(v) of this section.

Another commenter appeared to object to § 773.13(a)(1)(v) as he believed it misinterprets the intent of the section and the coordination of previous §§786.11, 761.12, and 786.14. He believed that: (1) The purpose of including this information is to allow the broadest spectrum of citizen involvement in the permit process, (2) only one public hearing, after adequate notice and approval of proper authorities, need precede a relocation or waiver of the prohibition on mining within 100 feet of the road, (3) it is unlikely that such a hearing under § 761.12 will occur prior to the public notice under previous §786.11, (4) an informal conference under previous § 786.14 pursuant to the notice may meet the public hearing requirement of § 761.12, and (5) the hearing required prior to relocation must be one held under the auspices of the Act, joining specifically the concerns and factors designed to be addressed under the Act.

OSM agrees with the commenters that flexibility of mining schedules might make the timing and duration of relocation (and closing) difficult to predict, and therefore has added the word "approximate" to the final rule. To clarify when a new public hearing regarding a public road is required and when a prior hearing will suffice, OSM added the phrase "for this particular part of the road." OSM agrees to make this section applicable to closing of public roads for consistency with revised § 761.12(d). OSM agrees with the commenter that only one public hearing need precede relocation [or closing] of a public road, which is what this final rule requires. A hearing held under § 761.12 would be under the auspices of the Act. These rules allow some flexibility as to when the hearing must be held and, along with § 773.13(c)(4), allow it to be combined with other proceedings.

Section 773.13(a)(1)(vi).

Section 773.13(a)(1)(vi) retains the requirement of previous § 785.13(g) that if the application includes a request for an experimental practice, the advertisement shall include a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

Several commenters suggested coordinating this section with any changes in § 785.13.

OSM has coordinated this rulemaking with the one on experimental practices and a notice of a request for approval of experimental practices remains in the final rule, as discussed in the preamble to § 785.13 (48 FR 9478, March 4, 1983).

Section 773.13(a)(2).

Final § 773.13(a)(2) corresponds to previous §§ 786.11 (d)(1) and (d)(2) and provides that a copy of the permit application must be placed on file for public inspection and copying at the courthouse of the county where the mining is proposed to occur or an accessible public office approved by the regulatory authority. This is in accordance with Section 507(e) of the Act which provides the regulatory authority with discretion to approve an alternative filing location. Also, the filing in the public office of applications for significant revisions to a permit and permit renewals under previous §§ 788.12(b)(2) and 788.14(b)(1) is included in final § 773.13(a)(2) and made consistent with that for filing permit applications.

One commenter was concerned that, under the proposal, the regulatory authority could approved alternative places for filing permit applications without considering the accessibility to the public of such filing. The commenter stated that alternative filing (other than the county courthouse) is important, particularly in the West, where county lines often do not parallel road networks and settlement patterns, and coal fields and distances are great; thus, many residents are effectively cut-off from easy access to the county courthouse where an application would be filed. The commenter believed that accessibility is the paramount consideration for the choice of alternative filing locations by the regulatory authority under Section 507 of the Act, that the consideration of an appropriate public office was intended to refer to accessibility, as is reflected in the language of Section 517(f) of the Act, and that availability and convenience of access was the intent of the local filing provision of Section 507(e) as well, and cited page 92 of House Report 95–218 (95th Cong., 1st Sess., 1977). Another commenter agreed and thought the proposed change would reduce the public's ability to understand and participate in the permitting process because applications could be filed in locations that may not be readily accessible to the public. OSM agrees with the commenters that accessibility to local residents is the intent behind the local filing requirement, and has changed the terminology in the final rule from "appropriate" to "accessible."

One commenter proposed that OSM delete the requirement to file subsequent revisions of applications with the public office at the same time the revision is submitted to the regulatory authority. Another commenter argued that the term "significant revision," when used in proposed § 773.13, was confusing because it could refer to changes made in the application after it was determined to be administratively complete and before it was determined complete and accurate.

An additional commenter was confused by the dual use of the term "revision" and believed that the last sentence in Paragraph (a)(2) conflicted with proposed § 773.25 concerning permit revisions. Several commenters felt that any submittal of "significant revisions" should be the basis for restarting the comment period, although they felt such a second review period would not need to be as extensive as the 4-week notice and full 30-day comment period.

One commenter's suggestion was either: (1) To allow the public an opportunity (e.g., 10, 20, or 30 days) to comment on a change (revision) once it has been filed with the county recorder and regulatory authority; or (2) to allow the applicant to change (revise) the permit application up to 20 days after the last newspaper notice of § 773.13(a), and to file with the regulatory authority and county recorder in the same manner as an original permit application. The application would be received by the regulatory authority and county recorder within time limits.

To clarify the difference between a significant revision to a permit under proposed § 773.25 and a revision to an application during the review process prior to permit issuance, OSM has cross-referenced significant revisions to final § 774.13 and used the word "change" rather than "revision" when discussing changes to a permit application submitted during processing. Such changes must be filed with the public office at the same time as they are submitted to the regulatory authority. The suggestion to delete this requirement is rejected. The final rule also adds the term "renewal" to clarify that, in keeping with § 774.15(b)(3), this section applies to renewals as well.

If any change to the application should occur which would significantly

impact the public review process, the regulatory authority always has the discretion to reopen the comment period. The need for reopening the comment period is best left for the regulatory authority to decide for each case.

Section 773.13(a)(3).

Final § 773.13(a)(3) requires written notification to government agencies by the regulatory authority upon receipt of an administratively complete permit application and is similar to previous § 786.11(b), except that an "other identifier" may be used as an alternative to the application number.

One commenter wanted proposed word "reviewed" changed to the word "inspected." This change was made for the same reasons as given under the discussion in the preamble to § 773.13(a)(1)(iii).

One commenter again stated that the phrase "administratively complete" is legally objectionable.

The comment on administrative completeness is discussed in the preamble to § 701.5 under "administratively complete application."

A commenter believed that the regulatory authority notification must indicate the applicant's intention to mine "a *particularly* described tract of land," not merely a "described tract" and that the rule must be revised to contain the particularity of description necessary to intelligently involve other agencies and authorities in permit review.

OSM did not accept the comment regarding the description of the land because the term "particularly" is duplicative, as it relates to "described tract of land." The description of the land proposed to be mined should be sufficient to enable the notified agencies to identify the location of the land. The term "particularly" does not add any further clarity to the provision.

Another comment on this section was that in States that use permit application numbers, application numbers should be used as the identifier at all times when the regulatory authority is giving notice to other agencies of government.

The permit application number would be the easiest identifier, and presumably the one used, but in this final rule that choice is left up to the regulatory authority.

The final rule also clarifies that this section applies to renewals, as is stated in § 774.15(b)(3).

Section 773.13(a)(3)(i).

Section 773.13(a)(3)(i) specifies that the written notification mentioned above must be provided to local governmental agencies with jurisdiction over the proposed operation or an interest in the area to be mined. These agencies shall include, but not be limited to, planning agencies and sewage and water treatment authorities as well as water companies. This paragraph combines the requirements of previous § 786.11(c) (2) and (3) and conforms the notification requirements to those of Section 513(a) of the Act. Interested Federal and State agencies will continue to be notified under § 773.13(a)(3)(ii). Final § 773.13(a)(3)(i) is primarily consolidation of the previous rules.

No comments were received concerning § 773.13(a)(3)(i).

The final rule revises the proposal by providing for notification of local agencies with an interest in the proposed operation for consistency with final § 773.13(a)(3)(ii) and Section 513(a) of the Act.

Section § 773.13(a)(3)(ii).

Final § 773.13(a)(3)(ii) is similar to the previous § 786.11(c) (1) and (4). It provides for the notification of those Federal and State agencies which are part of the permit coordinating process of sections 503(a)(6) and 504(h) of the Act or § 773.12 or those agencies with an interest in the proposed operations. Because the local Soil Conservation Service district of the U.S. Department of Agriculture has responsibility for verifying prime farmland aspects of any permit under the Act and because the U.S. Army Corps of Engineers district engineer has responsibility for protection of wetlands and issuance of permits under Section 404 of the Clean Water Act (48 FR 21466, May 12, 1983; 33 CFR Parts 320–330), The notification has also been required to include the local offices of these agencies.

The National Park Service was concerned that it be given an adequate opportunity to prevent mining on any lands within the boundaries of units of the National Park System when persons may be determined to possess valid existing rights (VER) to mine within such units. In response to this concern, OSM has agreed to ensure that the National Park Service receives notice of permit applications in which it may have an interest. This notification at the beginning of the application review process will enable the National Park Service to take any action at its disposal, including possible acquistion of the property, to protect the National Park System. In addition to this notification, the National Park Service and the U.S. Fish and Wildlife Service, as appropriate, are to be given notification under final 30 CFR 761.12(b)(2) of any separate applications for a determination that a person has valid existing rights for any lands within the boundaries of units of the National Park System and the National Wildlife Refuge Systems. See 48 FR 41350, September 14, 1983.

One commenter believed that written notification should be sent to Federal, State, and local agencies with an interest in various facets of the proposed operation, in order that the purposes of the Act are met, and that lack of coordination would result in the inadvertent issuance of permits that will not meet the purposes of the Act.

Other commenters wanted to add written notification to State and Federal fish and wildlife agencies. They believed that limiting notification to agencies with jurisdiction would jeopardize coordination between the regulatory authority and State and Federal fish and wildlife agencies.

Several other commenters wanted to delete from notification the local U.S. Department of Agriculture's Soil Conservation Service district office and U.S. Army Corps of Engineers' district engineer since: (1) Their inclusion implies all listed agencies must be notified; (2) not all mines are required to notify agencies listed in the regulation; (3) the regulatory authority should have discretion to notify appropriate agencies when necessary; and (4) if these agencies fit the criteria, they will be notified anyway.

The final rule retains the phrase "or those agencies with an interest in the proposed operation" when describing the agencies to receive written notification of an application. This addition, along with the specification of State and Federal fish and wildlife agencies and the historic preservation officer, assures that legal mandates to protect fish and wildlife and historic sites can be met in accordance with final § 773.12. OSM has chosen not to require notification of the U.S. Environmental Protection Agency or similar State agencies since the phrase "permits and licenses applicable to the proposed operation" should cover the applicable State or Federal agency.

Coordination with other agencies is covered by this section, by final § 773.12, and by reference to Section 503(a)(6) of the Act. Reference to Section 504(h) was added for Federal program coordination. As the preamble to the previous permanent program rules (44 FR 15097, March 13, 1979) states, the determination of which governmental units are sent such notice is "a task for each regulatory authority familiar with the governmental and administrative structure in its particular State." Thus,

OSM did not list other governmental entities.

The comments to delete specific agencies were considered, but OSM believed that these specific agencies should be specified as stated here and in the preamble to the proposed rule. The commenter is incorrect in stating that the applicant would have to notify these agencies. This regulation and the Act requires the regulatory authority to send the written notification.

OSM agrees that the regulatory authority should have the discretion to notify other appropriate agencies when necessary. This rule does not preclude the regulatory authority from exercising such discretion.

Section 773.13(b) Comments and objections on permit applications.

Final § 773.13(b) deals with the opportunity for various persons and entities to submit written comments and objections on permit applications and consolidates the requirements of previous §§ 786.12 and 786.13.

Section 773.13(b)(1).

Final § 773.13(b)(1) contains the requirements of previous §§ 786.12 (a) and (b) concerning the timing and allowing submittal of comments by the public entities notified of the application by the regulatory authority under § 773.13(a)(3). For consistency in handling of written submissions, OSM added the word "objections" to clarify that that type of submission was not excluded.

One commenter believed that, in order to be consistent with the proposed changes, OSM must clarify that the opportunity to submit written comments and objections applies to both "initial or revised" permit applications. The commenter noted that revisions which are significant are subject to notice and comment according to Section 511(a)(2) of the Act.

Other commenters stated that the regulatory authority should not have latitude to establish a "reasonable timeframe" for submitting written comments on permit applications from public entities. The time should be a minimum, specific time allowance, such as submittal within 30 days after publication of newspaper notice, as was proposed in § 773.13(b)(2).

OSM decided to accept the comment concerning adding significant revisions and to also include renewals, as required by final §§ 774.13 and 774.15. This clarifies that public entities may submit written comments or objections on any application for a permit, significant revision to a permit, or renewal of a permit within the time set by the regulatory authority.

OSM considered combining §§ 773.13 (b)(1) and (b)(2) so that both would have a 30-day comment period after newspaper publication, but decided to use the language of Section 513 (a) and (b) of the Act which makes a distinction between the local governmental agencies and the general public. Under the final rule, the regulatory authority has the discretion to have the two comment periods run concurrently.

Section § 773.13(b)(2).

Final § 773.13(b)(2) provides for written objections from heads of Federal, State, or local governments agencies and persons having interests which are or may be adversely affected by the proposed mine to be submitted to the regulatory authority. These provisions were found in previous § 786.13(a)

One commenter believed that: (1) The addition of the proposed new phrase "by the issuance of the permit" does not agree with the statutory language, potentially interferes with the intent of the Act, and should be deleted, (2) objections should be allowed to be made by a person with an interest that is or may be adversely affected by *any* aspect of the proposed operation, or by a particular failure in the permit approval, and (3) the adverse impact is the decision of the agency on the permit application.

OSM agrees with the commenter that it is the agency action which should be compared to a person's interests to determine if he may file objections. OSM has changed the proposed regulatory language to allow any person with an interest which is or may be adversely affected "by the decision on the application" to file written objections. The addition of such a phrase is necessary to clarify the reference point for a person's interests. The phrase furthers the intent of the Act and is consistent with the statutory language. Under the final rule, a person with an interest which is or may be adversely affected may object to any aspect of the permit application. OSM also added the terms "significant revision to a permit" and "renewal of a permit" to parallel final § 773.13(b)(1).

Section 773.13(b)(3).

Final § 773.13(b)(3) would combine previous §§ 786.12(c) and 786.13(b), with minor editorial changes. No substantive change is intended by the consolidation.

One commenter noted that the term "objections" should be added to Paragraph (b)(3)(i), since Paragraph (b)(3) references both comments and objections. Another commenter wanted to make this information publicly available, as proposed in Paragraph (b)(3)(ii), but not necessarily at the office where the permit is filed. Another commenter stated that "public review" should be changed to "public inspection" in Paragraph (b)(3)(ii).

OSM accepted the comment suggesting the addition of the term "objections" to this section and has made the appropriate change. OSM decided to clarify the public office with which the regulatory authority is required to file such comments and objections. The public office must be the same as the one where the application is filed so that the public will have available for review a record of the comments and objections filed with the regulatory authority. Public "review" was changed to "public inspection," as discussed in the preamble to § 773.13(a)(1)(iii) above. The word "permit" was deleted from Paragraph (b)(3)(ii) in order to clarify that applications for significant revisions and renewals are included within the generic term "application."

Section § 773.13(c)—Informal conferences.

Final § 773.13(c) would replace previous § 786.14 relating to informal conferences. Previous § 786.14(a) has become final § 773.13(c)(1) while previous § 786.14(b)–(d) have become § 773.13(2)–(4), respectively.

Section 773.13(c)(1).

Final 773.13(c)(1) identifies who may request an informal conference and what the request must include.

One commenter suggested that the phrase in § 773.13(c)(1) be expanded to "the request shall contain such information required by regulatory authority."

OSM decided not to adopt this suggestion as the regulatory authority has the discretion to require additional information if necessary, so long as any additional information requirements do not inhibit public participation. OSM has decided to clarify that this section applies to applications for significant revisions and renewals. In conformity with the change made in paragraph (b)(2) of this section, OSM also changed the standing provision in this paragraph to refer to interests affected "by the decision on the application." No other substantive changes have been made from the proposed rule which was similar to the previous rule.

Section 773.13(c)(2)(i).

Final § 773.13(c)(2) parallels previous § 786.14(b) and provides for the holding of the informal conference. Its location is provided for in Paragraph (c)(2)(i) of this section. No comments were received concerning this section.

Section 773.13(c)(2)(ii).

Section 773.13(c)(2)(ii) requires the regulatory authority to notify the applicant and other parties of the date, time and location of the conference. In addition the public is to be notified by a newspaper advertisement at least 2 weeks before the conference. No comments were received concerning this section. The rule has remained unchanged from the proposed rule which is similar to previous § 786.14(b)(2) except that direct notification to the parties has been added.

Section 773.13(c)(2)(iii).

Section 773.13(c)(2)(iii) provides for access to the permit area for parties to the informal conference, which was included in previous § 786.14(b)(3).

One commenter noted that the proposal at § 773.13(c)(2)(iii) replaced the phrase "mine plan area" with "permit area," in the context of access to the area for purposes of gathering information prior to the informal conference. The commenter believed that the proposal unduly restricts the pertinent area insofar as collection of hydrologic data is concerned. The commenter stated that the mine site and surrounding area is "relevant" to the permit decision and access to that larger area must be assured.

Other commenters suggested that a phrase should be inserted which would ensure that any related data gathering on the permit area prior to the established date of the conference would be limited to issues raised in Paragraph (c)(1)(i) for requesting the conference.

The term "mine plan area" was remanded by the District Court for the District of Columbia. *In re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, at 35 (D.D.C. February 26, 1980), and clarified at 57 (May 16, 1980). The term "mine plan area" was subsequently removed from the regulations on April 5, 1983 (48 FR 14814). In the same rulemaking, a "permit area" was defined to include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit. "Adjacent area" was defined in that final rule to include the area outside the permit area where a resource could be expected to be adversely impacted by the proposed operation. The reader is referred to the April 5, 1983 rulemaking for additional discussion on these issues.

In the context of an informal conference, the adjacent area would include the area where the hydrologic balance could be impacted by the operation. Because the collection of information pertaining to hydrologic impacts outside the permit area could be relevant to an informal conference on a permit application, OSM has accepted the commenter's suggestion in part. It is quite possible that the applicant will not own or have the right to enter all of the "adjacent area" on which conference participants might wish to collect information. If the applicant does not itself have the right to enter certain lands, then it cannot grant entry to other conference participants. Therefore, a provision is added to the rule providing that the regulatory authority may arrange with the applicant for access by conference parties to the adjacent area to the extent that the applicant has the right to grant such access. The owners of the surrounding area retain their legal rights to determine access to their property. The regulatory authority could have no control over this.

No change in the proposal is deemed necessary in response to the comment suggesting limiting the data gathering to issues raised by the person requesting the conference. The rule clearly states that the access granted would be for the purpose of gathering information *relevant* to the conference. The regulatory authority may adopt whatever procedures are necessary to clarify the extent of issues relevant to the conference.

Section 773.13(c)(2)(iv).

Section 773.13(c)(2)(iv) deals with administrative procedures for an informal conference. No comments were received concerning § 773.13(c)(2)(iv), which was included in previous § 786.14(b)(4) and the rule has been adopted as proposed.

Section 773.13(c)(3).

Final § 773.13(c)(3) provides for cancellation of an informal conference. Final § 773.13(c)(3) includes the provisions of previous § 786.14(c) with minor editorial changes. No comments were received concerning § 773.13(c)(3) and the rule has been adopted as proposed.

Section 773.13(c)(4).

Final § 773.13(c)(4) includes the provisions of previous § 786.14(d). Section 773.13(c)(4)provides that informal conferences under § 773.13(c) may be used as the public hearing on road relocation or closing under § 761.12(d).

One commenter suggested that Paragraph (c)(4) delete the word "uses" since § 761.12(d) does not require a hearing on uses of roads. OSM has accepted this comment and has added the word "closing" to conform with §§ 761.12(d) and 773.13(a)(1)(v).

Section 773.13(d) Public availability of permit applications.

Final § 773.13(d) deals with public availability of applications for permits, revisions, renewals, and transfers, assignments or sales of permit rights.

Section 773.13(d)(1).

Final § 773.13(d)(1) includes the requirements of the previous § 786.15(a), stating the general rule that applications will be available to the public, except that the requirement for a written request for public inspection has been dropped as superfluous. Information is to be available at "reasonable times." The regulatory authority may set up guidelines including written requests, to provide such access. However, written requests are not necessary in all cases. The term "open" has also been changed to "available" and a provision added to the opening language referring to exceptions to the general rule provided in Paragraphs (d)(2) and (d)(3).

One commenter commended the agency for deleting the requirement that a written request precede public inspection, since he felt it accomplished nothing but delay in access.

Another commenter stated that § 773.13(d)(1) should apply to all applications, not just permit applications and applications for significant revisions, since Section 507(b)(17), 507(e), 508(a)(12), and 508(b) of the Act are relevant to confidentiality of certain types of information for all such applications.

OSM agrees with the commenter that this section should apply to all types of applications and has made the appropriate changes.

Another commenter wanted public "review" changed to public "inspection".

The final rule changes the term "public review" to "public inspection" to be in accord with Section 507(e) of the Act and § 773.13(a)(2).

Section 773.13(d)(2).

Final § 773.13(d)(2) follows previous § 786.15(a)(1) and provides that certain information pertaining to the coal seam and other physical data shall be available to persons whose interests

may be adversely affected by the decision on the application. A new provision has been added to the final rule indicating that information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

One commenter took issue with the statement in the proposed preamble that there is no substantive change from previous § 786.15(a)(1). In the preamble to proposed § 773.13(d), the restricted availability paragraph was described as providing that "certain information pertaining to the coal seam and other physical data shall be available *only* to persons whose interests may be affected." The commenter believed that Congress intended to keep only the information pertaining to the coal seam itself confidential.

The commenter reviewed Sections 507(b)(17), 507(e), and 508(b) of the Act and concluded that the language of Section 507(b)(17) of the Act does not restrict the availability of application information regarding "coal seams, test borings, core samplings, or soil samples" to persons with an interest which is or may be adversely affected. Rather, the commenter believed Section 507(b)(17) of the Act guarantees access to such environmental information to persons with an interest which is or may be adversely affected, notwithstanding the provisions of Section 508(b) of the Act which would otherwise require that such information be held in confidence. He noted that Section 507(e) of the Act requires that the application be placed on public file, except for information pertaining to the coal seam itself.

One commenter believed that the title of proposed § 773.13(d)(2), "Restricted Availability," should be deleted. The commenter also noted that the proposed regulation did not contain the term "only," as did the corresponding proposed preamble. He suggested that the preamble should be revised to state that § 773.13(d)(2) would require that certain information pertaining to the coal seam and other physical data shall be available to persons whose interests may be affected, notwithstanding the provisions of § 773.13(d)(3)(ii).

One commenter stated that the proposed § 773.13(d)(2), as reflected in its title and the preamble, conflicts with Section 507(e) of the Act and is not a necessary interpretation of the Act when Sections 507(b)(17), 507(e), 508(a)(12), and 508(b) are read together. The commenter believed: (1) That the restrictive interpretation is not necessary to protect trade secrets or other vital proprietary information, since equivalent information may already be available to a competitor from public files or can be obtained by subsurface investigation of adjacent properties, (2) that the restrictive interpretation would increase regulatory costs to all applicants by denying them access to existing subsurface information and thereby requiring that detailed subsurface investigations (core drilling and test borings) be conducted on each and every proposed permit area rather than relying upon equivalent information as allowed by Section 508(a)(12) of the Act, and (3) that such a restrictive interpretation would prohibit regulatory authorities from making regional environmental analyses of overburden and coal characteristics based on information in permit applications and making the results available to industry and the public and would prohibit regulatory authorities from releasing overburden and coal data to interested State and Federal agencies.

Two commenters recommended that information on overburden obtained through test borings, core samplings, and soil samples be made available to the public and that only information on the coal seam be held confidential or restricted under Section 507(b)(17) of the Act.

Another commenter recommended adding a qualifier, "subject to Paragraph (d)(3)" to assure that this information will be kept confidential since the nature of the information is such that it must be kept confidential.

Another commenter questioned the meaning of the two phrases "information pertaining to coal seams" and "person with an interest which is or may be adversely affected." The commenter believed that the first phrase is too broad and includes data on coal that is a trade secret, and that inclusion of the second phrase would result in everyone meeting the adversely affected standards.

A suggestion made by another commenter was that the definition of "interested persons" should include anyone concerned with the analysis of a coal seam to determine its acid-forming potential, as well as anyone concerned about the thickness of a coal seam to determine the potential for subsidence and hydrologic disruption.

In response to the comments on the proposed title of this section, OSM has retitled the paragraph "Limited Availability" to point out the distinction the Act places on the availability of certain information to persons with an interest which is or may be adversely affected.

OSM disagrees with the commenters who believed that the information covered by Section 507(b)(17) of the Act must be on public file under Section 507(e) of the Act. Section 507(e) contains a general statement of availability of permit applications. Section 507(b)(17) contains restrictions on this general availability for information required by that particular subsection. Read together, the two sections provide standards for general availability, limited availability, and confidentiality of differing types of information. The rules implementing those statutory standards are included in final § 773.12 (d)(1), (d)(2) and (d)(3)(i).

Section 508(b) of the Act provides an additional standard for the confidentiality of information submitted under that section. Thus, information submitted under section 508 of the Act is presumed to be confidential unless required to be on public file under State law, except that certain coal seam information *must* be held in confidence under § 508(a)(12) of the Act. These standards are included in § 773.12 (d)(3)(i) and (d)(3)(ii) of the final rule.

OSM recognizes that there is an overlap between the information required to be included in an application under Sections 507(b)(17) and 508(a)(12) of the Act. Thus, while Section 508 of the Act would presume the confidentiality of information resulting from test borings, Section 507 of the Act provides that similar information is to be made available to persons who may be adversely affected. Final § 773.12(d)(2) clarifies the relationship betwen these sections of the Act.

The final rule provides, in accordance with Section 507(b)(17) of the Act, that information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. However, the commenter who objected to the preamble of the proposed rule was correct in noting that this "limited availability" under the Act does not prohibit a State from making information on test borings available as part of the public record. Additionally, under Section 508 (a)(12) and (b) such information would not be confidential if it were required to be on public file pursuant to State law. The final rule recognizes this and adds a provision to final Paragraph (d)(2) specifically stating that such information shall be made available to the public if it is required to be on public file pursuant to State law.

OSM disagrees with the commenter's three justifications on why the information should be open to the public. Whether the information is actually kept secret from competitors or whether the same information is

available from other sources is not relevant to this rule. Nor is the potential cost to competitors of collecting similar information relevant so far as the limited or restricted information is concerned. In addition, all necessary regional environmental analyses can be made within the limits of this rule.

OSM agrees in part with the comment to qualify the information subject to the restrictions in Paragraph (d)(3) described below. OSM agrees that information pertaining to the coal seam should be subject to restriction in § 773.13(d)(3)(i) that the physical and chemical properties of the coal be kept confidential. OSM does not agree that the restrictions in § 773.13(d)(3)(ii) on the availability of reclamation plan information that is not on public file pursuant to State law should apply to persons with an interest which is or may be adversely affected.

OSM disagrees with the commenter who objected to use of the phrase "person with an interest which is or may be adversely affected." This is the standard established by Section 507(b)(17) of the Act and is unchanged in the final rule. House Report 95–218, on page 90, states that it is the intent of that committee that the phrase "any person having an interest which is or may be adversely affected" is to be construed to be in accord with the broadest standing requirements enunciated by the U.S. Supreme Court. This rule is consistent with that report. On the other hand, the other suggested definition that "interested persons" should include anyone concerned with the acid-forming potential of the coal seam is potentially broader than such standing requirements and has not been adopted.

Section 773.13(d)(3).

Final § 773.13(b)(3) includes the requirements of previous § 786.15 (a)(2) in part, (a)(3), and (b). Section 773.13(d)(3)(iii) was added to incorporate requirements under the Archeological Resources Protection Act of 1979 (Pub. L. 96–95, 93 Stat. 721, 16 U.S.C. 470) for keeping information confidential on the nature and location of archeological resources on public and Indian lands. The final rule has also been revised to indicate that the procedures established to ensure confidentiality must include notice and opportunity to be heard for persons both seeking and opposing disclosure. This language has been added to clarify the minimum due process requirements for such decisions.

One commenter wanted to allow the regulatory authority not to restrict access to information if State law does not allow restricting access.

One commenter approved of the addition of § 773.13(d)(3)(iii), which allows information on archeological resources to be protected by the regulatory authority.

The comment on not restricting access to information if State law does not restrict access is covered by § 773.13(d)(2). Exceptions to this are limited to those provided for in paragraph (d)(3).

Section 773.15 Review of permit applications.

Section 773.15(a) General.

Final § 773.15(a) generally includes the provisions of previous §§ 786.17(a)(1) and 786.23 setting out the general provisions governing regulatory authority review of applications. Provisions in previous § 786.23 dealing with the periods for review of applications from holders of interim program permits after approval of the permanent regulatory program have been deleted. OSM has worked with State regulatory authorities to establish appropriate time limits. Deletion of these provisions in the regulations reduces excess verbiage and reduces long-term confusion in interpreting the regulations.

The listing in previous § 786.23(b)(2)(ii) of considerations for establishing a time period for review of permits when no informal conference has been held is deleted. The regulatory authority has the discretion to establish a reasonable time for processing permits based upon the entire State program. The listed items are not necessarily the only items that should be considered by the regulatory authority.

Comments on § 773.15(a) which discuss the requirements for a complete application and approval or denial within 8 months are addressed in the premble to final § 773.11(b)(2)(ii). No other comments were received on this section and the section is adopted as proposed, with a clarification that this section also applies to applications for a revision or a renewal of a permit.

Final § 773.15(a)(2) includes the requirement of Section 510(a) of the Act that the applicant has the burden of extablishing that his application for a permit or revision of a permit is in compliance with the requirements of the regulatory program.

No comments were received on § 773.15(a)(2). The only change from the proposed rule is to clarify that this provision applies to applicants for permits and permit revisions.

Section 773.15(b) Review of violations.

Section 773.15(b)(1).

Section 773.15(b)(1) includes the requirements of previous § 786.17(c) pertaining to violations, with some changes. Section 773.15(b)(1) provides that if the regulatory authority determines that the applicant has any outstanding notices of violation of the Act or any Federal or State rule pertaining to air or water environmental protection, the regulatory authority shall require additional information from the applicant. This information may consist of either: (1) Proof that the violation has been or is being corrected to the satisfaction of the agency which issued the violation notice, or (2) showing that the applicant is in good faith pursuing an appeal of the validity of the violation. The regulatory authority will make the finding required in this section based on information provided in the permit application pursuant to § 778.14(c) and any other information available to the regulatory authority.

One commenter stated that each permit or operation should stand alone and any violation occurring on one operation should not have any bearing on an application for a permit for a different operation.

Another commenter stated that proposed Paragraph (b)(1) needed an editorial change to move the words "the Act" to the end of the phrase to clarify that *any* violation of the Act will trigger the provision, not just violations of the Act related to air or water pollution.

Section 510(c) of the Act requires the applicant to list all notices of violation incurred by it within the past three years on other operations. The section prohibits issuance of a permit unless the applicant shows that any outstanding violations have been or are being corrected. Thus, the Act clearly requires that each permit cannot stand alone but must be evaluated in light of the applicant's prior history of operations.

OSM agrees that any violation of the Act triggers this section and has changed the section to clarify this requirement. OSM has also modified the language to clarify that this section is a finding in accordance with Section 510(c) of the Act.

Section 773.15(b)(1)(i).

Section 773.15(b)(1)(i) is consistent with previous § 786.17(c)(1). Section 773.15(b)(1)(i) requires that the applicant submit proof that any outstanding violation has been or is being corrected.

One commenter stated that the language of § 773.15(b)(1)(i) should reflect Section 510(c) of the Act, in that

the agency with jurisdiction over the violation must be satisfied with the correction of the violation, while the regulatory authority must be satisfied with the proof submitted by the applicant.

OSM agrees with the comment and has changed the language of the final rule to reflect the language of Section 510(c) of the Act.

Sections 773.15(b)(1)(ii).

Section 773.15(b)(1)(ii) is derived from previous § 786.17(c)(2) and requires the applicant to provide information to establish that the applicant is pursuing a direct administrative or judicial appeal of an outstanding violation as an alternative to submitting proof that the violation was corrected. In addition, the paragraph states that the proof required under §773.15(b)(1)(i) must be submitted if the initial judicial review authority rules against the applicant.

Several commenters proposed to delete the proposed phrase "or terminate any surface coal mining and reclamation operation being conducted under a permit issued pending such review." The commenters believed that Section 510(c) of the Act authorizes permit denial, not termination of operations, and that as proposed, this section raised the questions of: (1) How to terminate an operation when a permit was never issued and (2) how haphazard termination of operations was legally justifiable without a hearing in light of other enforcement vehicles (e.g. show cause orders). The commenters also believed that the provision requiring termination of operations after final denial of relief was unnecessary in this section because the enforcement provisions regarding cessation orders established sufficient safeguards to protect the environment from danger severe enough to require cessation.

Another commenter believed that the Act does not give OSM authority to terminate one permit on the basis of violations on a different permit not being corrected. The commenter believed the regulation should provide that the regulatory authority may issue the permit *conditionally* pending the outcome of the appeal. Then if the appeal is denied, the regulatory authority could terminate the permit based on the occurrence of the subsequent conditions.

A commenter stated that this section as proposed provided for the applicant to receive a permit and to continue to operate until the final administrative or judicial review authority denies a stay or affirms the violation. The commenter believed that one level of administrative review or judicial review should be provided without penalizing the operator but that any further appeals should not stay permit termination unless the appellate review authority expressly grants a stay.

Another commenter stated that the proposed addition of the word "final" into the phrase "administrative or judicial hearing authority" potentially distorts the intent of Section 510(c) of the Act, which was to avoid penalizing good-faith litigants by denying pending applications. The commenter stated that history reflects that industry will often utilize delay as a tactic.

The commenter urged that delay not be encouraged. The previous rule provided that once a stay was denied or an appeal lost, the "good-faith" clause would no longer operate. The commenter stated that this is consistent with the limited intent of the Senate in passing predecessors of Section 510 of the Act. The commenter quoted the Senate Committee Report: "[T]he Committee also does not intend that a permit applicant can avoid the purpose of Section 510(c) simply by filing an administrative or judicial appeal. It is expected that the regulatory authority will carefully examine those situations where an administrative or judicial appeal is pending in order to ensure to the fullest extent possible that such appeals are not merely frivolous efforts to avoid the requirements of Section 510(c)." S. Rept. 94–28, 94th Cong., 1st Sess., p. 210 (1975); S. Rept. 95–128, 95th Cong., 1st Sess., p. 79 (1977).

According to the commenter, the word "final" as proposed is too ambiguous. He argued that the term would be permissible if construed to mean an appealable order, rather than an interlocutory one, but that if "final" is to be construed to mean that all possible appeals are exhausted, that would impermissibly strain the scope of Section 510(c) of the Act.

OSM agrees with the commenters that the phrase requiring termination of operations should be replaced with a provision allowing conditional approval of the permit pending the outcome of the appeal, which could then be withdrawn if the appeal was unsuccessful. OSM also agrees with the commenter who believed that the intent of Section 510(c) of the Act was not to penalize applicants for uncorrected violations which were being challenged in good faith before administrative or judicial tribunals. OSM has decided to change the language in this paragraph from "final administrative or judicial review authority" to "initial judicial review authority under § 775.13." Under this language, the applicant will have the opportunity to fully exhaust administrative appeals in good faith. Thus, the final rule deletes the concept of requiring permit denial or proof of corrective action if the final administrative appeal was unsuccessful since there would still be the right of judicial appeal. Since the applicant would not have won on the merits of his arguments up through the initial judicial decision, that is a reasonable cut-off point for the delay in submitting the proof of corrective action to the regulatory authority under this section.

Editorial changes were also made in final § 773.15(b)(1)(ii).

Section 773.15(b)(2).

As noted above, OSM agrees with the commenter that conditional approval of a permit is reasonable pending the outcome of the appeal described in § 773.15(b)(1)(ii) and has added a new § 773.15(b)(2) to cover this situation. If the appeal is unsuccessful then the proof required by Paragraph (b)(1)(i) must be submitted immediately. If the applicant does not establish that the violation is being corrected to the satisfaction of the issuing agency then it will have failed to satisfy the condition of its conditional approval and the approval will terminate by its own terms. The applicant must then cease any operations until it receives an approved permit. As the commenter noted, the operations must cease not because the permit was terminated but because the approval was withdrawn. The conditional approval is a reasonable mechanism to allow the regulatory authority to proceed with its review of an application while allowing the applicant to continue to pursue his rights of administrative and initial judicial review.

Section 773.15(b)(3).

Final § 773.15(b)(3) was proposed as § 773.1515(b)(2) and states that if the regulatory authority determines that the applicant or operator specified in the application has a demonstrated pattern of willful violations of the Act as described in Section 510(c) of the Act, then the application shall be denied. The requirement in previous § 786.17(d) that the applicant or operator be afforded the opportunity for an adjudicatory hearing on the determination before it becomes final is incorporated in this paragraph.

One commenter referenced this section and stated that each permit or operation should stand alone, and any violations occurring on one operation should not have any bearing on any action affecting another operation. This comment was discussed and rejected in

the preamble to final § 773.15(b)(1) above.

OSM believes that the rule and preamble for this section remain valid as proposed. OSM had modified the language to clarify that this section is a finding in accordance with Section 510(c) of the Act.

Section 773.15(c) Written findings for permit approval.

Omission of Previous Rules from the Final Rule

Final § 773.15(c) contains the requirements for written findings by the regulatory authority prior to permit approval. These requirements correspond to those under previous § 786.19 regarding the criteria for approval or denial of a permit. In all cases, final § 773.15(c)(1) requires a written finding that the application is complete and accurate and has complied with all the requirements of the Act and the regulatory program. In addition to this general requirement, Congress required that certain specific findings be made.

The language of the final rule has been substantially revised to omit the previous requirements for written findings not required by Section 510 of the Act. The final rule does not include requirements for written findings that are not specified in the Act and which are unnecessary or redundant. For these reasons, the final rule does not include provisions for written findings required under previous §§ 786.19 (j) and (m) dealing with the effect of the proposed mine on nearby mines and approval of the proposed postmining land use. Previous § 786.19 (g) and (i) dealing with outstanding violations and a pattern of willful violations have been deleted as redundant of the provisions included in final § 773.15(b) (1) and (3). The intent of previous §§ 786.17(b) and 786.19(k) concerning submittal of the performance bond or equivalent guarantee prior to issuance of the permit is covered in final § 773.15(d).

Additional written findings required under Sections 515(b)(16) (for combined surface and underground operations) and 515(b)(20) of the Act (for long-term intensive agricultural postmining land use) are provided in final § 773.15(c) (8) and (9). By referring to Part 785, Paragraph (c)(8) ensures that the regulatory authority will make all findings required for any special types of mining such as combined surface and underground operations or operations on prime farmlands.

Several comments were received concerning proposed deletions from previous §§ 786.17 and 786.19. One commenter stated that the proposed changes would reduce the public's ability to understand and participate in permitting decisions by omitting the requirement that the regulatory authority make certain written findings that mine permits comply with the law.

Several comments were received regarding the proposed deletion of previous § 786.17(a)(2) which required the regulatory authority to determine the adequacy of the fish and wildlife plan. Two commenters stated that the deletion of this requirement was improper for underground mines because the fish and wildlife plan for underground mines was not remanded by the district court in *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., February 26, 1980).

Another commenter stated that the written findings must include a finding, such as that in previous §§ 786.17(c) and 786.19(g), that the provisions of Section 510(c) of the Act regarding violation information have been satisfied before the permit may be issued. This commenter also noted that OSM proposed to delete the findings previously contained in §§ 786.19 (j), (m) and (n), and 786.21 (see final § 773.15(c)(6)) with the rationale that those sections lack justification in the Act. The commenter asserted that Section 510(b) of the Act requires that the applicant affirmatively demonstrate and the agency find, in writing, that the permit complies with all the requirements of the Act and that the operation will be conducted in accordance with the Act and permit. The commenter believed that the list in Section 510(b) was not intended to be exclusive of other specific but not specified findings and that the legislative intent expressed on page 172 of House Report 95–218 was that there findings were among other showings that would precede approval. The commenter believed that the findings made by the regulatory authority would be needed as a last check to assure that all specific considerations and approvals are complete and also believed that the regulatory authority is required to make a specific finding for alternative postmining land uses in accordance with Section 515(c) of the Act as was provided in previous § 786.19(m).

Another commenter stated that the regulatory authority must make all approvals prior to permit issuance under Sections 510(b) (1) and (2) of the Act; and the commenter believed that previous § 786.19(n) would have assured this requirement was met. The commenter thought that practical experience shows that many States and OSM itself are not aware that findings such as required by Section 510(c) of the Act must be made during the permit process *prior* to approval. Therefore, the commenter believed that a provision such as prior § 786.19(n) would not be redundant.

OSM disagrees that these changes in the required findings will reduce the public's ability to understand or participate in permitting decisions. Section 773.15(c) concerns findings made by the regulatory authority on specific aspects of an application which contribute to the decision on whether a permit should be issued. The public will still be able to review all the information in the permit application and participate in the permitting decisions.

OSM has decided not to add a finding concerning the adequacy of the fish and wildlife plan. No such finding is required under Section 510 of the Act and §§ 779.20 and 780.16 were suspended as a result of litigation in *In re: Permanent Surface Mining Regulation Litigation, supra*, Mem. op. at 38. If at some future time a fish and wildlife plan is reestablished in the permit application requirements, the finding required by § 773.15(c)(1) will ensure that this plan is accurate and complete and is in accord with all requirements of the Act and regulatory program.

OSM agrees with the commenter that a finding is needed concerning past violations by surface coal mining operations owned or controlled by the applicant. To clarify that final § 773.15(b) (1) and (3) must be findings by the regulatory authority, the language in those sections has been modified as discussed previously.

OSM agrees that Section 510(b) of the Act is not necessarily an inclusive list of findings. The regulatory authority may add other findings to assure compliance with its program. The legislative history does not indicate, however, that Congress intended other specific written findings to be made by the regulatory authority. Rather, Congress established in Section 510(b) important findings required by the Act. The overall findings of compliance with the Act and regulatory program will ensure that all provisions of the Act are met.

Section 515(c) of the Act does not require a specific finding for alternative postmining land uses and is not the underpinning for revised § 816.133. Final § 773.15(c)(1) requires the permit application to be accurate and complete. Section 785.14 provides the permitting requirements for the types of mountaintop removal operations covered by Section 515(c) of the Act.

Thus, the findings in paragraph (c)(1), that the permit application is complete and accurate, and in Paragraph (c)(8), that the applicant has satisfied the applicable requirements of Part 785, encompass those special operations as well as the normal postmining land use provisions of §§ 779.22, 780.23(a), 783.22 and 784.15 and negate the need for previous § 786.19 (j) and (m).

Previous § 786.19(n) is no longer needed because the finding required by § 773.15(c)(2) covers the concerns of the previous section. The previous rule was thought to be necessary to ensure that surface mining operations were not conducted where reclamation is not feasible (44 FR 15101; March 13, 1979). Section 773.15(c)(2) requires such a finding so there is no need to duplicate that assurance in two findings.

Final § 773.15(c)(3) in conjunction with § 761.11(c) negates the need for previous § 786.19(e), since together these two rules ensure that all lands covered by the unsuitability prohibitions of Section 522 of the Act, covered by previous § 786.19(e), are excluded from the proposed permit area.

Section 773.15(c).

One commenter believed the purpose of written findings is to force a comprehensive assessment of the proposed operation prior to permit issuance and to assure, by requiring specific written findings from the agency, that the mandates of the Act are being followed. OSM does not disagree. The requirement that the regulatory authority make written findings of compliance helps ensure that the regulatory authority has fully completed an assessment of the proposed operation prior to permit issuance and that the mandates of the Act will be followed. However, the same level of permit review is required under the general findings of § 773.15 (c)(1) and (c)(2) as would be required if more specific findings were required by the regulations. It is the analysis and evaluation performed by the regulatory authority that will determine whether a permit should be issued. The formalization of every component of that analysis in a "finding" does not necessarily ensure that the required work will be or has been done. OMS's experience has shown that the previous rules that contained a larger number of required findings did not assure that all regulatory authorities would perform their permitting functions properly. More important than the number of findings in the regulations is the commitment of the regulatory authority to execute its functions responsibly. These rules should be looked at as part of OSM's entire program, including oversight, to ensure the Act is followed.

One person commented that the findings in § 773.15(c) should be required for all revisions, not just significant ones. Another commenter agreed that only significant revisions need written findings, but pointed out that this appears to contradict the Act. The commenter proposed that "revisions be defined as "significant alterations".

OSM disagrees with the comment that findings are required for all revisions. Section 511(a)(2) of the Act requires the regulatory authority to establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; provided that revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. This section of the Act thus gives the regulatory authority discretion in terms of permit application information requirements and procedures for various types of revisions; i.e., those that propose alterations other than in the reclamation plan and those that do not propose significant alterations in the permit. OSM recognizes that Sections 510 (a) and (b), and 513(a) of the Act provide requirements for revisions, but do not differentiate in those sections between the types of revisions. Section 511(a)(2) distinguishes at least two types of revision applications. Because Section 511(a)(2) of the Act is the specific section governing the approval of revision applications, it should, therefore, be used in interpreting the general provisions of Sections 510 and 513 of the Act. This interpretation is supported by comparing the relevant provisions. For instance, although Section 510(b) of the Act requires that all findings be made for "revision applications," the more specific Section 511(a)(2) simply requires a finding that reclamation as required by the Act and program can be accomplished under the revision. The other findings may be required by the regulatory authority in its discretion. The regulatory authority must determine which revisions will be covered by all the permit application requirements, including all the findings of Section 510(b) of the Act. Presumably these will be the most significant revisions. OSM has chosen not to introduce the suggested new term, "significant alterations," because the term "significant revision" is used throughout these rules and is the minimum required of the regulatory authority.

Section 773.15(c)(1).

Final § 773.15(c)(1) follows Section 510(b) of the Act and previous § 786.19(a). Section 773.15(c)(1) requires a permit application or application for a significant revision of a permit to be complete and accurate and to have complied with all requirements of the Act and regulatory program.

One commenter stated that § 773.15(c)(1) should use the language of Section 510(b)(1) of the Act, claiming that it is broader and mandates that all requirements of the Act have been met, such as procedural requirements not related to the content of the application.

OSM has modified the regulatory language to clarify that in addition to filing a complete and accurate permit application, the permit applicant must have complied with all of the other requirements of the Act that were applicable prior to permit issuance. These could include procedural requirements attendant to the permitting process. They do not include requirements of the Act that first arise after a permit is issued.

Section 773.15(c)(2).

Final § 773.15(c)(2) is similar to previous § 786.19(b), but has been revised to more closely follow the requirements of Section 510(b)(2) of the Act. Section 773.15(c)(2) requires a finding that the applicant has demonstrated that reclamation as required by the Act and regulatory program can be accomplished under the reclamation plan contained in the permit application. The word "feasibly" contained in the previous rules has been deleted to be in closer agreement with the statutory language.

No comments were received on § 773.15(c)(2), and no changes have been made in the proposed rule.

Section 773.15(c)(3)(i).

Final § 773.15(c)(3) consolidates and simplifies the regulatory language of previous § 786.19(d) concerning areas designated as, or under study for designation as, unsuitable for surface coal mining operations. Section 773.15(c)(3)(i) also clarifies an ambiguity in the previous rules with respect to areas under study for designation by requiring that such areas must actually be covered by a petition submitted to the regulatory authority under 30 CFR Part 764 or 769 to be excluded from the proposed permit area. Study of the proposed permit area prior to the filing of a petition will not, under the final rule, be sufficient to preclude issuance of the permit.

Several commenters believed that the term "subject to study" as proposed should be changed to "under study," as in Section 510(b)(4) of the Act.

Another commenter stated that this section should be clarified to indicate that it does not extend the length of time when a petition may be accepted.

OSM agrees that the phrase "area under study" is more appropriate than "area subject to study" and is in accordance with Section 510(b)(4) of the Act. OSM also agrees this section does not extend the time when a petition will be accepted, as this time period is set in Part 764 for State programs and in Part 769 for Federal lands programs. OSM also made editorial changes in the regulatory language.

Section 773.15(c)(3)(ii).

Section 773.15(c)(3)(ii) provides that the regulatory authority must make a finding concerning whether the area is designated as unsuitable or subject to the prohibitions or limitations of §§ 761.11 and 761.12.

One commenter stated that the findings should be as specific as possible with respect to assuring that the operation will not violate Section 522(e) of the Act and that all necessary waivers of the 300-foot and 100-foot buffer zones for dwellings and roads are documented. The commenter felt previous § 786.19(d) (4) and (5) should be retained.

OSM has included the requirements of previous § 786.19(d) (4) and (5) in final § 773.15(c)(3)(ii) by referring to the rules requiring those buffer zones. This paragraph, along with Paragraph (c)(3)(i), assures that an operation will not violate Section 522 of the Act. In this respect, this provision is broader than the previous rule. The final rule also adds a cross-reference to Parts 762, 764, and 769.

Section 773.15(c)(4).

Final § 773.15(c)(4) is the same as previous § 786.19(f), with changes made in accordance with the numbering system of the final rule. For mining operations where the private mineral estate has been severed from the private surface estate, § 773.15(c)(4) requires a finding that the applicant has submitted to the regulatory authority the documentation required by § 778.15(b) establishing the applicant's right to extract the coal by surface mining methods.

One commenter stated that OSM exceeds the requirements of the Act in requiring actual consent of surface owner or documentation. The commenter believed the rule should be limited to the applicant's statement of the basis for entry rights, with no evaluation by the regulatory authority.

OSM disagrees with the commenter that § 773.15(c)(4) exceeds the requirements of the Act. The requirements set forth in § 778.15(b) are taken from Section 510(b)(6) of the Act. Section 510(b) of the Act requires a finding to be made on this subject and is implemented by § 773.15(c)(4).

OSM disagrees that the finding would be sufficient if it was limited to the applicant's statement of its right to enter the surface estate. Section 510(b)(6) of the Act requires a finding that the right to extract coal by surface mining methods has been established.

Section 773.15(c)(5).

Section 773.15(c)(5), which is derived from previous § 786.19(c), requires the regulatory authority to find that it has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The term "general area" in previous §§ 770.5 and 786.19(c) has been replaced by the term "cumulative impact area," as discussed in the revised hydrology rules. The term "mine plan area" has been deleted, in accordance with *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, at 35 (D.D.C., February 26, 1980), as clarified at 57 (May 16, 1980) and replaced with the term "permit area" which is consistent with the necessary information requirements. This change is in accordance with the deletion of the term "mine plan area" from all OSM rules as announced at 48 FR 14814, April 5, 1983. Other minor editorial changes have also been made. In addition, the term "material" has been added to the phrase "prevent damage to the hydrologic balance" to conform with the language of Section 510(b)(3) of the Act.

OSM added language in this section to clarify that the regulatory authority must determine that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

Several comments were received on the finding that probable cumulative impacts on the hydrologic balance have been assessed. One commenter objected to the assessment of probable cumulative impacts of anticipated coal mining on the hydrologic balance because the regulatory authority is not endowed with the ability to see the future. The commenter believed that an adverse determination on this basis is not justifiable.

Another commenter stated that the proposed rule would not require hydrologic information to be gathered for the entire life of the mining operation in direct violation of Section 507 of Act.

Another commenter stated that unless and until the proposed definition of "cumulative impact area" becomes final, OSM should not utilize the term in this rulemaking. It was proposed by the commenter that reference should instead be made to the assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the area specified in Section 507(b) of the Act. The commenter proposed that when rules further defining that area are finalized, the appropriate language may then be inserted, after notice and opportunity to comment on the definition itself.

Section 510(b)(3) of the Act requires this assessment to be made by the regulatory authority. The regulatory authority may receive the necessary hydrologic information from a coal company if submitted or may collect the data needed to make the assessment itself.

The comment concerning the life of the mining operation reflects a misunderstanding of this section. The cumulative impact area includes anticipated mining, which by definition includes the life of the proposed mining operation, as well as other operations.

OSM disagrees with the comment concerning the use of the term "cumulative impact area." This term was proposed for rulemaking in the same **Federal Register** as this rulemaking. Notice and opportunity to comment on that definition have been provided. Comments on the use and definition of that term are included in the preamble to the final hydrology rule.

Section 773.15(c)(6).

In the proposed permit rule, previous § 786.21, which contained the findings on existing structures, was proposed for deletion.

One commenter pointed out that reference should be made in the permit approval decision with respect to the need for modification, abandonment, or compliance of existing structures with the requirements of § 701.11 and Subchapter A of Chapter VII.

OSM agrees with the commenter that a finding is necessary to ensure that existing structures are in compliance with § 701.11(d) and the applicable performance standards of Subchapters B or K, as determined by § 701.11(d). This information is not otherwise contained in or referenced in Subchapter G, which specifies the information needed in

permit applications. Reference to Subchapter A is not necessary since § 701.11(d) contains the only provisions in that subchapter relevant to existing structures. OSM has added § 773.15(c)(6) which requires that the regulatory authority find that existing structures comply with § 701.11(d) and Subchapters B or K, as applicable, for compliance, modification, and abandonment of existing structures.

Section 773.15(c)(7).

Final § 773.15(c)(7) includes the requirements of previous § 786.19(h). This section requires a determination that the applicant has paid all reclamation fees required by Subchapter R.

One commenter objected to requiring regulatory authorities to document that the operator has paid all AML fees. The commenter asserted that AML fee collection is an OSM responsibility, and the regulatory authority should not become an enforcement tool for OSM, so this finding should be deleted.

OSM disagrees with these comments and believes that this section reflects the requirements of Sections 402 and 510 of the Act. As stated by OSM at 44 FR 15101, this section is required in order to make clear that a permit applicant must have a history of compliance with all portions of the Act, not just Title V. The regulatory authority has the responsibility to assure this history of compliance prior to any permit issuance. Thus, OSM must ensure that all reclamation fees have actually been paid. The words "from previous and existing operations" have been added for clarification.

Section 773.15(c)(8).

Section 773.15(c)(8) includes the requirements of several previous sections.

As proposed, the paragraph required a written finding by the regulatory authority under Section 515(b)(16) of the Act, for variances from contemporaneous reclamation requirements for combined surface and underground operations, and referred to the special permit application rules in § 785.18.

A commenter noted that variances from the contemporaneous reclamation requirement for combined operations is not the only finding required by Part 785.

OSM agrees with the comment. Although only § 785.18 pertains to contemporaneous reclamation requirements for combined surface and underground operations, there are other findings required in Part 785 for other special types of operations. This finding has therefore been broadened so that the regulatory authority must assure that all specific requirements for special categories of mining have been met. The revision of this finding also negates the need for a separate finding that the special permit requirements for alluvial valley floor and prime farmland operations in §§ 785.19 and 785.17, respectively, have been met as was included in proposed § 773.15(c)(6) and previous § 786.19(1). Thus, the findings for alluvial valley floors and prime farmlands are incorporated here.

Section 773.15(c)(9).

Section 773.15(c)(9) requires a written finding by the regulatory authority of compliance with the revegetation rules if a long-term intensive agricultural postmining land use is to be approved. Sections 816.111(d) and 817.111(d) allow variances from certain of the revegetation performance standards when a cropland postmining land use is approved. This implements the second proviso of Section 515(b)(20) of the Act.

No comments were received on this section. The rule has been adopted as proposed with some editorial changes and a change in the cross-reference to reflect the movement of the variance provision to the revegetation rules from post mining land use rules.

Section 773.15(c)(10).

Previous § 786.19(o), concerning the protection of endangered and threatened species, was proposed for deletion in 47 FR 27699 (June 25, 1982).

One commenter recommended retention of previous § 786.19(o) and stated that deletion of this section would put the burden of compliance with the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, on the operator. The commenter believed that responsibility for compliance with that statute belongs with OSM through oversight evaluation and that the responsibility for determining the effect of surface mining on threatened and endangered species belongs with the regulatory authority. Another commenter noted there would be environmental impacts from elimination of § 786.19(o).

According to one commenter, deletion of the finding that there would be no impact on threatened or endangered species would reduce the public's ability to understand and participate in permitting decisions.

Another commenter believed that, with respect to protection of threatened and endangered species, the Endangered Species Act and Section 515(b)(24) of the Act require that OSM exercise its full power to provide protection for fish and wildlife and stated that the U.S. Fish and Wildlife Service should have been consulted regarding changes to the findings concerning threatened and endangered species.

OSM agrees with the comments that a finding should be made by the regulatory authority that threatened and endangered species would not be adversely affected by the operation. The substance of previous § 786.19(o) has therefore been retained as § 773.15(c)(10). Sections 4 and 7 of the Endangered Species Act of 1973 and 50 CFR Part 402 require actions to be taken to ensure that OSM's activities and programs, including approval of State programs and granting of permits, will not affect the continued existence of threatened or endangered species of their critical habitats. Requiring the regulatory authority to make these findings concerning threatened or endangered species does not exempt the operator from responsibility under the Surface Mining Control and Reclamation Act and the Endangered Species Act not to adversely affect or mofity the critical habitats of threatened or endangered species.

Section 773.15(c)(11).

Section 773.15(c)(11) is a new paragraph which was added to require the regulatory authority to find that the surface coal mining and reclamation operations will not adversely affect a private family burial ground. Relocation of a private family burial ground is not considered an adverse affect if such relocation is authorized by applicable State laws or regulations. This finding was added in response to comments on the proposed definition of "cementery" at 30 CFR 761.5 in the proposed rules concerning the unsuitability of areas for surface coal mining and reclamation operations. In view of the exclusion of private burial grounds from the definition of "cemetery," and the purpose of the Act as expressed in section 102(a) to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, OSM has added the new finding. See the unsuitability regulation rulemaking on § 761.5 for specific comments (48 FR 41320, September 14, 1983).

Section 733.15(d) Performance bond submitted.

Section 773.15(d) includes the requirements of previous § 786.17(b) for submittal of the performance bond or equivalent guarantee prior to the actual issuance of a permit. No comments were received on this section, and it has been adopted as proposed.

Section 773.17 Permit conditions.

Section 773.17 lists permit conditions which apply to each permit approved under the regulatory program and issued by the regulatory authority.

One commenter stated that previous § 786.29(c) allowed the regulatory authority to attach specific conditions to a permit. The commenter believed the proposed language "unless specified in the permit application" would allow certain conditions to be waived, but would not clearly allow additional conditions to be imposed by the regulatory authority. The commenter suggested that an additional subsection be added to § 773.17 to clarify that the regulatory authority may impose additional conditions as necessary to ensure compliance with the intent and purposes of the Act.

The introductory language is changed in final § 773.17 to delete the ambiguous language which the commenter thought would allow waiver of conditions to permits. Under the final rule, the conditions of § 773.17 are applicable to all permits. The regulatory authority may always impose additional conditions as necessary to ensure compliance with the intent and purpose of the Act and its own regulatory program, so repeating that authorization in final § 773.17 is not necessary. This authority is further recognized in Paragraph (b) of this section.

Another comment was that previous § 771.19 must be reinstated to ensure the obligation of the permittee to comply with permit conditions.

OSM agrees that the permittee must comply with permit conditions, the Act and the regulatory program. Paragraph (c) of this section has been revised to clearly require such compliance. Additionally, § 773.11 includes the requirement that permits be obtained for all surface coal mining and reclamation operations and § 773.17(b) requires that the operation be conducted as described in the approved application. Thus, there is no need to reinstate previous § 771.19.

Section 773.17(a).

Section 773.17(a), which is the same as previous § 786.27(c) with appropriate changes in citations, limits surface coal mining and reclamation operations to approved and bonded areas shown on the permit application map.

No comments were received on this section, and it was adopted as proposed.

Section 773.17(b).

Section 773.17(b) incorporates the requirements of previous §§ 786.27(a) and 771.19, with minor editorial changes. The section requires operations to be conducted only as described in the approved application except as otherwise directed in the permit.

Several comments were received to simply require operations to be conducted as described in the permit. The commenters suggested deleting the proposed word "only" and the proposed phrase "application, except to the extent the regulatory authority otherwise directs in the permit." The commenters felt that these changes would eliminate ambiguity, confusion, and unnecessary language.

OSM has not changed this provision which emphasizes that the operation must be conducted in accordance with the approved permit, including permit conditions. OSM is not eliminating the word "only" since the application must be complete and accurate to be approvable. A permit revision must be approved by the regulatory authority if the operator wishes to deviate from the approved application and permit.

Previous § 786.29(c) is deleted as redundant. Previous § 786.29(c) allowed the regulatory authority to place special conditions on permits in order to protect the environment in special situations (see 44 FR 15104, March 13, 1979). Final § 773.17(b) negates the need for this requirement since it provides for operations to be conducted as described in the application, except as the regulatory authority otherwise directs in the permit. Thus, the regulatory authority has the authority to place special conditions on permits for environmental protection.

Section 773.17(c).

Section 773.17(c) implements the basic requirement of Section 515(a) of the Act that all operations must meet all applicable performance standards of the Act, and the requirements of the regulatory program. This incorporates the portion of previous § 771.19 which is not incorporated in § 773.11 or 773.17(b). Previous § 786.29(b) is deleted as redundant. Previous § 786.29(b) placed affirmative responsibilities on operators to dispose of materials produced by pollution control devices in an environmentally acceptable manner as required by Subchapter K, the regulatory program, and other applicable State or Federal law. Since § 773.17(c) requires all operations to meet applicable performance standards of the Act and the requirements of the regulatory program, it is not necessary to highlight performance standards for pollution control devices. Also, there is no need to require operations not to violate other State and Federal laws, since those laws already apply.

The section has been adopted as proposed with revisions discussed above to more closely parallel the language of section 515(a) of the Act.

Section 773.17(d)(1).

Section 773.17(d) includes the provisions of previous § 786.27(b) with some changes. Section 773.17(d)(1) requires every permittee to allow the authorized representatives of the Secretary and the regulatory authority to have the right of entry provided for in §§ 842.13 and 840.12. This is the same requirement as in previous § 786.27(b)(1).

No comments were received on this section, and it was adopted as proposed except for changing the designation of paragraph (d)(i) to (d)(1).

Section 773.17(d)(2).

Section 773.17(d)(2) establishes a permit condition that private persons be allowed to accompany a State or Federal inspector when the inspection is in response to a report by that person of an alleged violation.

One commenter supported the proposal that " private inspectors"—private persons accompanying inspectors—be allowed only when there is a Federal inspection.

Another commenter stated that a State program is not approvable under Section 503(a) of the Act unless it provides for citizens to be able to accompany the inspector on the mine site when the citizen has requested the inspection and provided information about an alleged violation. The commenter felt that such a provision is mandatory both upon the State program and upon the permittee as a permit condition.

OSM agrees that private persons may accompany representatives of both the Secretary and the State regulatory authority when the inspection is in response to a report of an alleged violation made by a private person. The final rule has been revised accordingly.

Section 773.17(e).

Section 773.17(e) includes the conditions previously in § 786.29(a) Section 773.17(e) requires a permittee to take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit. No comments were received on this section, and OSM has adopted the rule as proposed.

Section 773.17(f).

Section 773.17(f) provides the permit condition for existing structures.

Previous § 786.21 which provided criteria and conditions with respect to existing structures has been deleted. Instead, § 773.17(g), in conjunction with § 773.15(c)(6), provides and abbreviated version of the requirements relying on references to the substantive provision at § 701.11. OSM has included this requirement as a permit condition to ensure that the provisions of § 701.11(d) are met.

Section 773.19 Permit issuance and right of renewal.

Section 773.19(a) Decision.

Section 773.19(a) concerns the decision on a permit application. It implements the requirement of Section 514(c) of the Act that, if the application is approved, the permit shall be issued and, if application is disapproved, specific reasons for disapproval must be set forth in the notification. This section was proposed as § 773.15(a)(3).

One commenter proposed to add to the first sentence the phrase "upon submittal of a performance bond in accordance with Subchapter J."

OSM agrees with this comment, and the phrase has been added to the final rule. In accordance with Section 509(a) of the Act, a permit may not be issued until a performance bond had been submitted under Subchapter J.

Section 773.19(b) Notification.

Section 773.19(b)(1) and (2).

Section 773.19(b)(1) and (2) include the reporting requirements of previous § 786.23(e) and (f). The notice provisions, however, have been revised to reduce the paperwork burden on the regulatory authority. Requirements to notify the applicant and the local governmental officials in the local political subdivision have been retained, as required under sections 510(a) and 514(b) of the Act. The final rule also requires notification of persons filing objections (or comments) to the permit application and of parties to an informal conference, since they should have adequate notice of the decision in order to request administrative review of the decision under § 775.11. The newspaper notification requirements of previous § 786.23(e) have been deleted as unnecessary since all parties which had expressed interest in the application will be directly notified.

Two commenters noted that proposed §773.15(a)(4), which is final §773.19(b)(1) and (2), deleted several provisions from the previous regulations, including notice to persons who were parties at the informal conference and newspaper notice of the permit decision.

The commenters believed that if a person had participated in the informal conference, that person should be given notification about the decision, so that he or she may contest it if he or she is aggrieved. The commenters also believed that there may be members of the public who had no objection to the permit as proposed, but who may be distressed by some of the conditions imposed by the regulatory authority and should be notified by a newspaper summary of the decision.

Another commenter stated that the newspaper notice of permit issuance by the regulatory authority should be retained to assure that all parties and interested or affected "non-parties" receive notice.

The term "comments," has been added to the final rule, since it could be difficult to differentiate between comments and objections. This clarifies that anyone who comments on, or sends in objections to, the application should be directly notified. Also, OSM agrees that parties to the informal conference should be notified and has made the appropriate addition. Each of those persons should be notified so they may appeal it if they are aggrieved.

Requiring a summary of a decision to be published in a newspaper would place an unnecessary paperwork burden on the regulatory authority. It is unnecessary to assure that parties receive notice beyond direct notification. Further, the general public will receive newspaper notice with initial submission of the application and therefore will be able to track processing of the permit if they are interested. Double notification is unnecessary, burdensome, and not required under the Act. OSM believes that direct notification to persons who have expressed an interest is more beneficial.

Final § 773.19(b)(2) contains the provisions of previous § 786.23(f) requiring notification of local governmental officials in the local political subdivision where the mine will be located within 10 days of issuance of the permit. Some editorial changes have been made in the final rule.

Section 773.19(b)(3).

Section 773.19(b)(3) retains the requirement, previously in § 786.23(e)(1)(ii), to notify OSM, if the regulatory authority is a State, since this information is necessary for OSM to conduct oversight of a State program.

No comments were received on this section, which was proposed as § 773.15(a)(5). OSM has adopted the proposed rule, with some editorial changes.

Section 773.19(c) Permit term.

Section 773.19(c) establishes that the term of a permit will be 5 years or less, unless the requirement of § 778.17, concerning additional time needed to obtain financing, are met. This was the requirement of previous § 786.25(a).

One commenter stated that the permit term is appropriate. Another commenter stated that a permit term of 5 years or less is needless bureaucratic control over private enterprise and requires an operator to be continually involved in permitting. Another commenter stated that OSM must amend this section to read "each permit," rather that "a permit."

Section 506(b) of the Act requires all permits issued pursuant to the Act to be issued for a term not to exceed 5 years, except under certain conditions. Thus, the final rule in § 773.19(c) continues to apply the maximum 5-year permit term.

The language has been amended to read "each" rather that "a", in order to meet the intent of the statutory phrase "all permits."

Section 773.19(d) Right of renewal.

Section 773.19(d) contains provisions establishing rights of renewal under an approved permit application. It includes requirements of previous §§ 786.25 and 788.13(a).

By order of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C.) Slip op. at pp. 35–36 (February 26, 1980) and Slip op. at pp. 57–58 (May 16, 1980), OSM suspended the use of the term "mine plan area" in the regulations. In two separate rulemaking actions on August 4, 1980 (45 FR 51550) and April 5, 1983 (48 FR 14814) the term "mine plan area" was suspended and then removed from the regulations and alternate areal descriptors were used in its place. The alternate terms were selected in accordance with the requirements of the Act.

In light of the suspension and removal of the term "mine plan area" from the regulations, OSM has reevaluated the requirements of the Act and has determined that a previous interpretation, as described below, was inconsistent with the right of permit renewal; incorrectly required a new permit application approval for each subsequent area to be mined; incorrectly limited the size of the permit area to that area in which surface coal mining operations are conducted during the initial permit term; and was not in accord with Congressional intent.

Section 773.19(d) of the final rule clarifies an ambiguity which existed in the interpretation of the provisions for permit renewal and the length of the permit term in previous §§ 788.13–788.16 and 786.25. Specifically, § 786.25(a)(2) provided for a maximum permit term of 5 years, unless the applicant requested a longer term and included a showing that the specified longer permit term was needed to obtain financing. However, previous § 778.17(b) stated that whenever an applicant proposed to conduct mining activities in excess of 5 years the application must include the information required for an extended permit term under § 786.25(a)(2). Thus, under a literal interpretation of these sections of the previous rule, an operator was apparently prohibited from proposing to conduct a mining operation in excess of 5 years, unless the financial information requirements of § 786.25 were met.

Under the final rule, such information on financing is required for a permit to be issued for a term that is in excess of 5 years. However, an operator may propose to mine for greater than 5 years and the approval of the regulatory authority may cover such extended operations, so long as the permit is issued for a fixed *term* of 5 years or less. These changes are reflected in final §§ 773.19 (c) and (d), and 778.17. Although the previous regulation could have supported life-of-the-mine area permits, OSM did not follow such a practice.

Under these final rules, OSM will distinguish between the duration and scope of the activities covered by the permit application approval and the period the permit will remain in effect. Such a distinction is recognized in the Act. Under Section 509(a) of the Act, it is clear that the permit area may contain lands upon which no surface coal mining operations will be conducted during the initial permit term. That is consistent with the provision allowing incremental bonding. Although the Act contains a temporal limitation on permits, there is no limitation on the size of the permit area, so long as the permit application is accurate and complete. In this context, it should be noted that the provisions in the Act establishing the approval criteria for permits and permit renewals, Sections 510(b) and 506(d)(1), are separate from the provisions establishing the respective permit terms, Section 506 (b) and (d)(3).

Under the previous rules, operators were not issued permits for areas in which surface coal mining operations would not occur during the initial permit term. Since most underground mines, most surface mines in the west, and many surface mines in the east are designed to operate for periods in excess of 5 years, the previous interpretation resulted in these mines being permitted in successive 5-year increments. The total area covered by all of the incremental 5-year permit areas over the entire life of the surface coal mine operations was defined as the "mine plan area;" and although the operator was required to submit some data and information on the "mine plan area" in the permit application, the permit approval did not extend to such areas. Accordingly, the renewal provisions of Section 506(d) of the Act were rendered virtually meaningless.

Under the definition in Section 701(17) of the Act, the "permit area" is to be that "area of land indicated on the approved map submitted by the operator with his application. . . ." Thus, the permit area is to be defined by the operator in his application. The permit application may be approved by the regulatory authority if it is accurate and complete; meets all of the requirements of the Act and the regulatory program; and the regulatory authority makes the necessary findings. However, once the application is approved, the permit can be issued only for a specified term not to exceed 5 years, unless the provisions of Section 506(b) of the Act (implemented under § 778.17) are met. In such cases, a permit for a longer specified term could be issued.

Under the Act and these rules, a permit area can be larger than the area which will be mined in one (5-year) permit term, providing the application covering the larger area is found to be complete and accurate and meets all other requirements for permit application approval. Under Section 506(d) of the Act, the permit, covering the approved permit area, has a right of renewal upon the expiration of each permit term, provided the standards for permit renewal are met. A new permit application approval is only required if the criteria for renewal are not met, if the renewal application includes a request for a revision of the permit, or if, in accordance with Section 506(d)(2) of the Act, an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit. When a renewal is approved, an operator can continue to mine under the permit during the subsequent term.

Under this rule, the permit term and permit issuance provisions are consistent with the requirements for permit renewal. The regulatory authority and the public are provided an opportunity to review the permittee's history of compliance with the permit, regulatory program, and Act and to ensure that necessary bonding and insurance requirements are updated and made valid for the succeeding term. Thus, the renewal application and required review for permit renewal do not repeat all the technical information requirements and analyses which were incorporated in the original approval. This is recognized in Section 506(d) of the Act which prescribes the requirements for permit renewal.

Several commenters supported the concept discussed in the preamble to the proposal concerning the right of renewal and the life-of-the-mine permit. They felt these revisions were appropriate and a better interpretation of law.

One commenter thought the proposal provided for the submittal of a general plan for the life of the mine and detailed environmental information with each 5-year renewal application. They felt this would allow the regulatory authority to confirm that the mine is being operated within the general approved framework.

This commenter is not correct in his interpretation. The permit application must contain detailed information for the entire area to be included in that permit application. A permit, with the right of successive renewal, cannot be approved for an area which does not have to complete and accurate application. The initial permit may not be a "general framework" with detailed 5 year plans to follow, but rather must be a complete and accurate description in accord with all permit application requirements for the entire operation as it will affect the entire permit area. If information for some part of the proposed permit area is not complete, then a permit may not be issued for that area.

One commenter believed that one of the purposes of the proposed permitting system was to allow the operator to submit a complete mining plan covering the entire area of the mine. From that standpoint, he believed that it was desirable. The commenter asserted that, logically, the permit should include the entire area to be mined, and there is nothing wrong with having a permittee ask for a renewal, which would presumably be on the basis of continuing to comply with the terms of the original permit. He noted that the Conference Report to the Act says that the "right of successive renewal [is] for areas within the valid permit, with the burden of nonrenewal on objectors to renew or the regulatory authority. Any new areas included in such permit

renewal requires meeting full standards applicable to new permits." H. Rept. No. 95–493, 95th Cong., 1st Sess. (1977).

OSM agrees with this commenter that a permit application could cover the entire area of the proposed mine, with the permittee asking for a renewal which would be approved on the basis of continuing to comply with the terms of the original permit.

One commenter state that final § 773.19(d) must limit permit approval to those lands described under the reclamation plan as being within the subarea for that individual permit; it cannot extend beyond the area reasonably anticipated to be mined during that permit term. The commenter stated that permit renewal applications for land areas beyond the existing permit boundaries, based on the permit term, must be treated as new applications. The commenter stated that the limited intent of permit renewal was to recognize that the permittee might not be able to mine the original area within the stated time and to allow completion of the operation within those limited boundaries via renewal.

Likewise, another commenter suggested that the second sentence of § 773.19(d) read: "The approved permit shall carry with it the right of successive renewal, within the approved boundaries *of the existing permit*, upon expiration. * * *" The commenter argued that the existing permit was limited to boundaries based on the permit term.

OSM agrees with the commenter that a permit renewal application concerning land areas beyond the existing permit boundaries must be treated as a new application and has added clarifying language to show that there is a right of successive renewal only within the "approved boundaries of the existing permit." OSM disagrees, however, that a permit application may only cover those areas which the operator reasonably expects to mine within the initial term of the permit. Nowhere in the Act is the regulatory authority prohibited from approving a permit application covering an area larger than that which operator expects to mine within the initial permit term. In fact, the commenters' suggestions indicate difficulty with the way in which the previous rule was applied. Those operators who accurately determined the area which could be mined within a 5-year term would not qualify for a permit renewal, while those operators who incorrectly estimated or misrepresented the amount of mining they could accomplish within 5-years, would qualify for permit renewal within the stated boundaries if they failed to complete the proposed mining within 5 years.

One commenter belived that the proposal would be a significant revision in the concept of permit term permit area, and permit renewal and alters Congressional intent and the mandates of the Act. The commenter stated that all permit terms are to be for no greater than 5 years, according to Section 506(b) of the Act. In accordance with Section 506(d)(3) of the Act, any permit renewal shall be for a term not to exceed the period of the original permit established by the Act. Thus, the commenter believed the renewal period, as well as the initial permit term, must be for a period of 5 years or less. Also, the commenter noted that the Senate Report 95–128 (95th Cong., 1st Sess., 1977) at page 74 states that "the terms of permits or permit renewals or extensions issued under State programs shall not exceed 5 years." The commenter thought that the exception to the 5-years limitation is available only if the extended term is needed to obtain financing for equipment and the opening of the operation and if the application is full and complete for the specified length of the proposd term. Another commenter believed that the intent of the 5-year period was to put operators on a "short leash" which is why there is an exception where operators could not obtain financing. The commenter believed that Congress adopted the exception so that operators would not be denied financing due to uncertainty about whether a second 5-year permit would be approved. If Congress had adopted the approach of the proposed regulation, the commenter believed that the exception would not have been necessary.

As stated earlier, the rules related to permit term, permit area, and permit renewal are consistent with Congressional intent and the mandates of the Act. The permit or renewal term, as stated in final § 773.19(b) must be 5 years or less, unless the requirements of final § 778.17 are met for the initial permit term. OSM agrees that the exception in § 778.17 to the 5-year initial permit term is for mines which need the extra time to obtain financing. However, the exception is not necessarily related to, and does not preclude, those operations which plan ahead and incorporate a larger area in the permit application than will be mined during the first 5 years.

Other commenters opposed to the proposal stated that the proposed regulations weaken the existing process by allowing an operator to include a 20-to-40-year mining operation within a single permit and continue that operation through permit renewals. They believe that this will make it much more difficult for the regulatory authority to require adaptation to changing circumstances and new mining technology. Although as one commenter pointed out, a permit covering a 20-to-40-year mining area is not disallowed by the Act.

OSM agrees with the commenter who noted that approval of a permit application covering a 20-to-40-year mining area is not disallowed by the Act. OSM disagrees that these regulations weaken the protection afforded the environment. No permit may be issued unless the permit application is complete and accurate and the other findings of Section 510 of the Act are made. Moreover, the operator is still required to obtain a permit revision under final § 774.13 for any changes from the approved application and permit; obtain a permit renewal under final § 774.15 at the end of each term; and be subject to regulatory authority review and modification of the permit during its term under final § 774.11. Thus, any permit application approved under the final rule will be subject to periodic public and regulatory authority review and will be subject to orders by the regulation authority to revise or modify the permit to ensure compliance with the Act and the regulatory program.

One commenter stated that there are two different concepts—the area covered by a permit and the area comprising the life-of-the-mine operation, and the first is a subarea of the second. The commenter stated that the two cannot be the same unless (1) the entire operation is capable of being mined in 5 years, or (2) the permit covers the last years of the life of the operation. The commenter believed that each permit application should contain only those areas which the operator reasonably expects to mine within the initial term of the permit. He along with another commenter believed that the Act is clear in its intent that each subarea be individually permitted, based on the amount of activity that can be conducted within that area during the permit term, (i.e. 5 years) in accordance with Sections 507(b)(8) and 508(a)(1) of the Act. The commenter believed that a permit cannot properly contain within its boundaries more area than can be mined and reclaimed during the permit term.

The commenter stated that the legislative history supports this reading as well and that Senate Report 95–128 (95th Cong., 1st Sess., 1977) at page 75

describes the application requirements for a permit as including "a plan for the entire mining operation for the life of mine including identification of the subareas anticipated to be included on a permit by permit basis, their sequence. * * *"

OSM disagrees with the commenter's view of the relation between the term of the permit and the area to be mined for several reasons. A permit is required for reclamation activities until final bond release. Since bond release cannot occur until after the 5- or 10-year period for establishing revegetation, no permit could have only one 5-year term without renewal. Such a situation could only exist if the mine was in a region of the country with greater than 26 inches annual average precipitation and the entire area could be mined and reclaimed in one day, thus beginning the 5-year revegetation responsibility period. Such an interpretation could not have been intended by Congress. The legislative history, as well as the language of Sections 507(b)(8) and 508 (a)(1) and (a)(11) of the Act, are fully consistent with the interpretation included here. The information provided under these sections will help the regulatory authority establish the number of permit renewals that may be requested by the operator and any additional areas where the operator may submit additional new permit applications to extend the existing operation. OSM does not assume that every operator will want to submit a permit application which covers a larger area than that anticipated to be mined in 5 years. For those operators who choose to submit a series of permit applications, Congress intended the regulatory authority to obtain information concerning the size, sequence, and timing of subareas for which it is anticipated that individual permits will be sought. Sections 507(b)(8) and 508(a)(1) of the Act are thus planning tools. They will also provide the regulatory authority information with which to make the cumulative hydrologic impact assessment (CHIA) required under Section 507(b)(11) of the Act to include an evaluation of all "anticipated mining," as well as the proposed operation. Such an interpretation is in accord with Section 701(17) of the Act which allows the operator to determine the size of the permit area covered in the application. Further, Sections 507(b)(8) and 508 (a)(1) and (a)(11) do not require the permit area to be limited to the area to be mined within the initial term. Additionally, as mentioned earlier, Section 509(a) of the Act recognizes that the area upon which the operator will conduct surface coal mining and reclamation operations during the initial term of the permit may be less than the entire permit area.

One commenter noted that under the proposed rule, upon the expiration of the nominal 5-year permit term, the operator simply gets a renewal of his existing permit rather than a new permit. If the operator is forced to get a new permit as the commenter believed the Act intended and the previous regulations required, he must make comprehensive showings of his ability to meet the Act's requirements, and the regulatory authority must allow broad citizen participation. Another commenter believed that an operator would have to show that his plans for the next 5 years were in compliance with the Act and that the operation had been in compliance with the Act up to that point. However, in obtaining a permit renewal, the commenter believed that a permittee does not need to make a showing that he can comply with the various permitting requirements of the Act, since in theory, he has already made the showing when he obtained his first permit. The commenter believed that a permit would be issued and with that issuance all citizen participation in the permitting process for the life of the operation would end and that the 5-year permit term was put in the Act to ensure periodic review based on operational experience, a review in which citizens could participate.

OSM agrees with the commenter that a renewal does not require the renewal applicant to make a showing that he can comply with all the various permitting requirements of the Act since he made that showing when he obtained his first permit. In order to grant a permit renewal, however, the regulatory authority must determine that the terms and conditions of the permit are being met, that the operation is in compliance with the Act and regulatory program, and that renewal will not substantially jeopardize the operator's ability to meet his continuing responsibility on the existing permit area. See Section 506(d) of the Act and § 774.15(c). Any time a permit revision is required by the operator or by the regulatory authority, the permittee must show that the revision complies with all requirements of the Act, as required by final § 774.13(c). The commenter's interpretation that the Act requires an operator to apply for a new permit at the end of the 5-year permit term is mistaken. The Act clearly states that existing permits have the right of successive renewal within their boundaries.

The commneter's assertion that with permit issuance all citizen participation would end is incorrect. Renewals of a permit are subject to the full public notification and participation requirements of §§ 773.13 and 774.15(b)(3). Significant revisions to a permit are subject to public notification and participation as required by final § 774.13(c). Citizens have an opportunity to comment on these applications. Their comments can be based on operational experience.

A commenter believed that the practical impact of the proposal is even worse than the legal impact. He contended that since every existing coal mine in the United States must be repermitted once primacy is obtained, all existing mines could receive their new permit, and permitting would then cease in the United States, except for new mines.

OSM disagrees with the comment that once existing mines have their new permits, permitting would then cease except for new mines. First of all, many operators may elect to have a series of permits. Because the permit application must be complete and accurate for the entire permit area prior to approval, it could be more practical for an operator to collect and submit the information for separate permit applications as subareas are ready to be mined, rather than attempt to satisfy the permitting requirements for the larger area. Secondly, operators would be required to apply for and obtain permit renewals for continued mining beyond the first permit term as well as permit revisions for changes in the mining or reclamation plan. As stated earlier, citizen participation would occur during review of applications for renewals and revisions.

One commenter strongly supported life-of-mine planning which he felt was envisioned in Section 508 of the Act, but limited with permits. The commenter believed that in the conference committee report there was never any dispute that the mining and reclamation plan was to be for the life of the mine, but that the permit was for 5 years and the operator had to come back in and repermit the operation. The commenter believed the conference committee transcript showed quite clearly the way the permitting system and the mining and reclamation plan were to work. He believed the theory is that there is life-of-mine planning (e.g., hydrology and probable hydrologic consequences) with permission to mine for only the first 5 years, and that for the second 5 year

interval, the operator would be evaluated on the basis of operational data and development of the mine and would need to obtain a new permit. This scheme would provide citizens a chance to make their input on whether the second 5-year permit term or the third or fourth needs any significant revisions.

OSM agrees that the analysis of hydrologic impacts under the CHIA extends to the anticipated life of the mine. However, other than in the analysis of cumulative hydrologic impacts that may occur, the Act does not *require* the permit to fully cover the life of the mine. Rather, the operator is to define the permit area in the application and thus the extent of permitting information required. In the original regulations, the term "mine plan area" was used to implement a life-of-the-mine concept. As stated earlier, that definition and the use of the term was enjoined by the U.S. District Court. These final regulations are in accord with this ruling. The commenter's suggestion that the permitting system and the mining and reclamation plan cover the life of the mine, while at the same time requiring the operator to obtain a new permit at the end of each 5-year interval must be rejected. Section 506(d)(1) of the Act clearly provides that a valid permit issued under the Act carries a right of successive renewal.

Requiring the applicant to cover the life of the mine in the permit application and then imposing a requirement to obtain a new permit at the end of each term is inconsistent with this right of renewal. Moreover, the permit renewal process provided in § 774.15 provides for full public participation in the permit renewal process. Under these final rules, citizens will have an opportunity to make their comments on whether a second 5-year permit term or the third or the fourth require any significant revisions.

One commenter believed that the hydrologic information should cover the life of the mining operations (probable hydrologic consequences (PHC) and cumulative hydrologic impact assessment (CHIA)). Another commenter was concerned that the hydrologic protection rules would be based on the 40-year or life-of-mine permitting system. Yet, the commenter believed that the proposed regulations do not deal with critical questions such as whether the hydrologic protection determination is to be made for the life of the mine, which the commenter believed it should, or only the first 5-year permit term.

The commenter believed that the permitting system is intertwined with substantive provisions and that if the life-of-mine permit concept was struck down in the courts, there would be confusion as to the meaning of the substantive hydrology provisions.

Requirements for hydrology assessments will remain the same. The determination of the probable hydrologic consequences of the operation will continue to be keyed to the permit area and adjacent area. The cumulative hydrologic impact assessment will be a comprehensive study of the effects of all anticipated mining including the entire life of the applicant's proposed mine, existing operations, operations for which an application had been filed, and certain other possible operations. A more complete discussion of the provisions related to hydrologic information and determinations is found in the preamble to the revised hydrology rules.

One commenter believed it is going to be more difficult for the public to participate in the permitting process if the operator only has to apply for a renewal at the end of the first 5-year period and does not have to file any new plans or maps.

OSM disagrees with the commenter that public participation is affected by whether the operator files new plans and maps, it the current plans and maps are appropriate. Prior to approval an application must be complete and accurate. There is no basis for a requirement to require new plans or maps routinely at the end of a permit term. The application will be subject to full review by the public prior to approval as well as public participation at the time of any renewal. If the operator chooses to change his operation, a permit revision must be processed in accordance with § 774.13. Any significant revision will also be subject to full public participation. Furthermore, requiring a renewal applicant to resubmit duplicative information would not be in compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

Section 773.19(e) Initiation of operations.

Final § 773.19(e) includes the requirements for initiation of operations contained in previous § 786.25(b). The general rule is that the permittee must begin the surface coal mining operation within 3 years of permit issuance or the permit will terminate. Certain exceptions are provided as they were in the previous rule.

One commenter suggested that the permit term begin at the start of coal mining because construction time should not subtract from the permit term.

This comment was not accepted. Surface coal mining and reclamation operations include support activities as well as the actual coal mining. Thus, such activities must be covered by the permit. Consistent with Section 506(b) of the Act, these rules provide for permits to be issued for a fixed term. Thus, the term of the permit begins upon issuance. Further, Section 506(c) of the Act specifies that the 3-year period, a established in § 773.19(e), begins with issuance of a permit although there can be reasonable extensions of time due to litigation, substantial economic loss, or conditions beyond the control, and without the fault or negligence of the permittee. For these reasons, OSM is not changing the language of this section.

C. Part 774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

Section 774.1 Scope and purpose.

Section 774.1 combines and simplifies previous § 788.1 through § 788.3 and deals with the scope and purpose of the revision; renewal; and transfer, assignment or sale of permit rights. This section was proposed as part of § 773.1, but was separated out when it was decided to create a separate Part 774 from proposed Part 773.

Section 774.10 Information collection.

This section codifies approvals by the office of Management and Budget. This section was proposed as part of § 773.10 but was separated when a new part was made. No comments were received on this section.

Section 774.11 Regulatory authority review of permits.

Section 774.11(a).

Section 774.11(a) is concerned with the review of outstanding permits by the regulatory authority. It deals with midterm permit review and is the same as previous § 788.11(a), except that the citations to the variances for mountaintop removal and delay in contemporaneous reclamation requirements in combined surface and underground mining operations are referenced to the appropriate permit section and placed in § 774.11(a)(2).

Section 774.11(a)(1) contains the same provisions as previous § 788.11(a)(2) concerning review of permits of longer than 5 years. Section 774.11(a)(2) combines and simplifies the requirements of previous §§ 788.11(a)(1), 785.14(d), and 785.18(e). For example, requiring permit review within 3 years from the date of issuance is simpler than the requirement of previous

§ 785.16(4)(d) for review within the 6 month preceding the third year from the date of permit issuance and provides review within the same period.

Section 774.11(a)(3) combines requirements from previous §§ 788.11(a)(1) and 785.16(e) and modifies the time for review of two special types of operations in keeping with changes made in other rulemakings. The new rule governing experimental practices requires a permit review at a minimum every 2½ years. 48 FR 9478 (March 4, 1983). A similar rule has been issued with regard to variances from the requirement to restore the approximate original contour under § 785.16.

One commenter concurred with the proposed changes to § 774.11(a)(1), which was proposed § 773.23(a)(1). However, the commenter stated that § 774.11(a)(2), which was proposed § 773.23(a)(2), combined review of the different variances and then allows such review to be waived if the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit. The commenter noted that there is no provision for a waiver of the review of variances allowing delays in contemporaneous reclamation for combined surface and underground mining.

The commenter also believed that the regulations must require that permits with variances granted under §§ 780.23, 785.14, 785.16, or 785.18 be reviewed before renewal of such permits. He felt that this is essential and in keeping with the heightened scrutiny that Congress intended for such operations. Absent a prerenewal review, the variance could in effect proceed for an entire permit term unreviewed (i.e., from the first permit midterm review until midterm review of the renewal). He stated that the prerenewal review is mandated by Section 506(d)(1)(A) of the Act and that the affirmative demonstration by the permittee must properly be in writing and must demonstrate compliance not only with the terms of the permit but also the Act, this chapter, and the State program.

Other commenters stated that since paragraph (a)(3) refers to experimental practices, it should be coordinated with changes in final § 785.13.

OSM agrees with the comment that midterm permit review of variances allowing delays in contemporaneous reclamation for combined surface and underground mining may not be waived and changed the language accordingly so it would comply with Section 515(b)(16)(C) of the Act.

The commenter's concern regarding another review of permits incorporating other variances before renewal is addressed in § 774.15(c)(1), which was proposed § 773.27(c)(1), and which in conformance with Section 506(d)(1)(A) of the Act, requires the regulatory authority to deny a revewal if it finds that the terms of the permit, including any variances, are not being met. However, the commenter's interpretation that Section 506(d)(1)(A) of the Act requires an affirmative demonstration by the permittee in writing, specifying compliance with the Act, rules, and State program is not correct. The regulatory authority may require such an affirmative demonstration under Section 506(d)(1)(E) of the Act, but Section 506(d)(1) places the responsibility on the regulatory authority of determine if the terms of the permit and the environmental protection standards of the Act and the regulatory program have not been met.

Section 774.11(a)(3) has been coordinated with changes in § 785.13(g) regarding permits for experimental practices and requires a review every 2½ years or as required in the permit, whichever is more frequent. See 48 FR 9478 (March 4, 1983).

Section 774.11(b).

Section 774.11(b) provides the regulatory authority with the authority to require reasonable revision of a permit to ensure compliance with the Act and regulatory program. This secton is derived from previous § 788.11(b).

One commenter believed that because this paragraph was contained in the proposed section entitled "Regulatory Authority Review and Modifications of Permits," which refers to the midterm review, these revisions ordered by the regulatory authority could only be associated with the midterm review. In order for it to be clear that the regulatory authority may require revision of a permit at any time and that the procedures of § 774.13, which was proposed as § 773.25, apply to all permit revisions, whether initiated by the permittee or the regulatory authority, the commenter suggested that § 774.13 should expressly provide for revisions required by the regulatory authority.

OSM agrees with the commenter that the procedures for approving a revision in § 774.13 should apply both to those required by the regulatory authority in § 774.11(b) and to those which the applicant proposes under § 774.13. Thus, OSM has added language in final § 774.11(b) which refers the applicant to the requirements in § 774.13 for approval of a permit revision. OSM also agrees that clarification is needed that the regulatory authority may require a permit revision at any time and not only after midterm review. OSM has added the phrase "or at any time" to make this clear. Also, OSM has deleted the term "modification" as unnecessary. Additionally, the reference in the proposed rules to § 780.23, land use variances, has been deleted in the final rules since its inclusion was a mistake.

Section 774.11(c).

Section 774.11(c) consolidates the paragraphs of previous § 788.11 (c) and (d) and requires that an order for revision of a permit must be based on written findings and be subject to administrative and judicial review, and that a copy of the order be sent to the permittee. The term "modification" was omitted from both Paragraphs (b) and (c) for consistency since § 774.13 utilizes the term "permit revision." No comments were received on this section and, other than editorial changes, it has been adopted as proposed.

Section 774.11(d).

Section 774.11(d) provides that a permit may be suspended or revoked in accordance with the enforcement provisions of Subchapter L. This contains the same provision as previous § 786.25(c) except that modifications have been deleted for consistency. No comments were received on this subsection and it has been adopted as proposed.

Section 774.13 Permit revisions.

Section 774.13, which proposed as § 773.25, contains requirements for permit revisions and includes material from previous § 788.12. The final rule allows the permittee to apply for both significant and insignificant permit revisions, but also requires in Paragraph (b) that the regulatory authority set guidelines establishing the scale or extent of "significant revisions". Significant revisions are required to meet all the permit application requirements for those parts of the permit which would be revised and all processing provisions including notice, public participation, certain notice of decision requirements, and proof of publication requirements for initial permit issuance.

The final rule changes the concept of the previous rule which required permit revisions only for "significant departures" from the original permit. It was not the intent of the previous rule to allow the operator to violate the terms of the existing permit so long as the departure was not "significant." At least

one interpretation would have allowed such departures. Under these final rules, the permittee is required to operate in accordance with his or her permit, including all revisions which have been approved by the regulatory authority. Nonsignificant revisions, however, are subject only to the review procedures established under the State or Federal program.

Previous § 788.12(a)(2) has been moved to final § 774.11(b). Previous § 788.12(a)(3) has been deleted as an unnecessary requirement, since revisions in the operator's bonding and insurance would be handled as would any other permit revision. Such changes are also regulated by the bonding rules in Subchapter J. Previous § 788.12(a)(4) has also been deleted as unnecessary since §§ 774.11(b) and 774.13 (a) and (b) cover revisions "as otherwise required under the regulatory program."

Two commenters wanted § 774.13 (proposed § 773.25) to apply to revisions required by the regulatory authority. Another commenter believed that cancellation and replacement of a bond is "significant" and should occur only in a "noticed" revision, as cancellation of bond coverage can signal problems in an operation and threaten reclamation.

The concern that § 774.13 should include revisions required by the regulatory authority is covered by the cross-reference in § 774.11(b). Further discussion of this issue is included in the preamble to § 774.11(b), above.

OSM disagrees with the commenter's contention that bond cancellation is necessarily a signal that reclamation is threatened and that a permit revision is necessary. There are a variety of reasons why a bond company might cancel a bond, and they may have nothing to do with the surface mining operation itself. Such changes are appropriately handled under the bonding regulation of Subchapter J, and need only be processed as a permit revision if they result in a change in the permit.

Section 774.13(a) General.

Section 774.13(a) states the basic rule that a permittee may apply for a revision to a permit at any time during the term of the permit. No comments were received on this paragraph, and the final rule is the same as the proposed rule.

Section 774.13(b) Application requirements and procedures.

Section 774.13(b)(1).

Section 774.13(b)(1) requires the regulatory authority to establish a time period for review and approval or disapproval of permit revisions. The required time period could vary depending on the scale or extent of the revision. The final rule closely follows the requirements of Section 511 of the Act and provides flexibility to the regulatory authority to establish time periods suitable to operation of the individual State program. Section 774.13(b) revises and replaces the requirements of previous §§ 788.12(c) and § 771.21(b)(3).

One commenter proposed to delete the requirement that the regulatory authority set a time period to act on revisions because it only forces time constraints on the regulatory authority.

OSM rejected this comment because Section 511(a)(2) of the Act requires the regulatory authority to set such a time limit.

OSM also renumbered this paragraph as § 774.13(b)(1) as part of the general reorganization of the permit rules, instead of § 773.25(b)(i) as in the proposal.

Section 774.13(b)(2).

Section 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply.

Section 774.13(b)(2) revises and replaces requirements of previous § 788.12(b) to follow the requirements of Section 511 of the Act and provides flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs.

One commenter pointed out that using the terms "significant" and "insignificant" revisions is a more realistic and workable approach to everyday problems associated with mining operations. Another commenter stated that only significant changes to a permit should be incorporated into the permit and administrative record; insignificant changes should only need to be documented to the regulatory authority.

One commenter noted that Section 511 of the Act requires alterations in the reclamation plan to be subject to notice and hearing. He also believed that alterations to legal, financial, and compliance information should trigger public notice and hearing requirements and also that OSM should set minimum standards for significant revisions.

Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to that document. The permit and all public copies of it should reflect all revisions approved by the regulatory authority so that all interested persons, including inspectors, the operator, and the public, will have an accurate copy of the permit. The permit is the document which authorizes the operator to mine and must be accurate. Section 511(a)(2) of the Act requires all "significant alterations" to the reclamation plan to be subject to the notice and hearing requirements of the Act. Paragraph (b)(2) of the rule implements this provision. The regulatory authority must set the guidelines as to what requirements will apply to nonsignificant alterations to the reclamation plan or permit.

The guidelines must also describe what changes to the legal, financial, compliance, or other permit information will constitute a significant revision.

This paragraph was redesignated from proposed § 773.25(b)(ii) to final § 774.13(b)(2).

Section 774.13(c) Criteria for approval.

Section 774.13(c) is a new section establishing minimum criteria for approval of permit revisions. The previous rules included criteria for permit approval or denial in previous §§ 786.19, 786.21, and 786.23. These requirements sometimes did not make sense when applied to permit revisions since they applied all the required findings for new permits to each permit revision. Section 511(a)(2) of the Act does not require all the findings for issuance of a new permit to be made for each permit revision, unless the revision would include an extension to the permit area other than an incidental boundary revision. Rather, the required findings and criteria for approval may be tailored to the scope of the proposed revision, provided that all requirements of the Act and the regulatory program are met. The final rule reflects this and provides the regulatory authority the flexibility to make only those findings necessitated by the application for a revision.

One commenter agreed that only "significant" revisions need written findings but believed that the Act contradicts this. The commenter proposed that "revisions" be defined as "significant alterations."

The concern that revisions be changed to "significant alterations" is discussed above in reference to § 773.15(c). As discussed more fully above, Section 511(a) of the Act requires the regulatory authority to set guidelines as to which permit application standards and procedures will apply to nonsignificant and significant revisions. Those standards and procedures include the findings made prior to approval, except

that the regulatory authority may not approve any revision without first finding that reclamation can be accomplished and that the revision complies with the Act and the regulatory program. The guidelines established by the regulatory authority should be designed so that the information required in a revision application corresponds to the findings which must be made by the regulatory authority.

Section 774.13(d) Request to change permit boundary.

Previous § 788.12(d), which stated that any extensions to the permit area, other than incidental boundary revisions, must be covered by an application for a new permit, has been transferred to final § 774.13(d).

One commenter suggested proposed § 774.13(d) be modified to require revisions to be made in accordance with provisions for application for a new permit, rather than to require a new complete premit application to revise a permit.

Another commenter expressed concern that to the extent that the initial permit area is smaller, the operator would need additional permits to expand and would have to file additional permit applications.

The first comment is rejected because Section 511(a)(3) of the Act requires a new permit to change the permit boundaries, other than incidental boundary revisions. However, OSM decided to revise the title to § 774.13(d) to clarify that this change is handled with a new permit application.

OSM agrees with the second commenter that to the extent an initial permit area is smaller, the operator would need to file additional permit applications in order to expend the permit area.

Section 774.15 Permit renewals.

Section 774.15, which was proposed § 773.27, provides requirements for permit renewals and replaces previous §§ 788.13, 788.14, 788.15, and 788.16. Section 774.15 contains requirements for filing, processing, and approving or denying applications for renewal of a permit.

The requirements of this section are intended to complement the rules for notice of decisions on permits and for permit term of § 773.19, and the provisions for permit revisions of § 774.13.

Section 774.15(a) General.

Section 774.15(a) provides the general right of permit renewal contained in previous § 788.13 (a) and (b). The regulatory language, however, has been revised and streamlined to reduce unnecessary verbiage.

One commenter noted that the right of renewal will do much to eliminate the current uncertainty of applicants. He believed that the permittee has had no assurance of renewal even if he was complying with the Act and regulations.

Two commenters suggested that Paragraph (a) read ". . . within the approved boundaries of the existing permit, upon expiration of the term of the permit." One commenter suggested that language be added after that sentence providing that where the permittee wishes to extend the area covered by his permit, he must apply for another permit, except in the case of incidental boundary revisions, in accordance with Section 511 of the Act.

OSM disagrees with the comment that current permittees had no assurance of renewal under the previous rules. Previous § 788.13(a) contined the same right of renewal within approved boundaries as final § 774.15(a). OSM agrees with the commenter's suggestion to add the phrase "of the existing permit" to clarify the term "approved boundaries." As indicated in final § 773.19(d), the approved boundaries of the existing permit are those lands that are designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. However, OSM decided not to add a sentence concerning extension of the permit area because that would duplicate requirements covered by §§ 774.15(b)(4) and 774.13(d). Further discussion of the provisions for permit renewal is contained above in relation to § 773.19(d).

Section 774.15(b) Application requirements and procedures.

Section 774.15(b) provides requirements for permit renewal applications and processing and generally parallels the provisions of previous §§ 788.14 and 771.21.

Section 774.15(b)(1).

Section 774.15(b)(1) replaces previous § 771.21(b)(2), with minor editorial changes, and implements Section 506(d)(2) of the Act. No comments were received on this section, which was proposed § 773.27(b)(1), and it has been adopted as proposed.

Section 774.15(b)(2).

Section 774.15(b)(2) covers the form and content of an application for a permit renewal and replaces previous § 788.14(a) (1) and (3). Section 774.15(b)(2)(i) requires the name and address of the permittee and the permit number, but recognizes that some States do not require permit numbers and allows the use of other identifiers in place of a permit number. Section 774.15(b)(2)(ii) requires information showing that insurance requirements will be met. The final rule includes additional requirements for applications for renewals, not explicitly stated, but required under the previous rule. The first is contained in § 774.15(b)(2)(iii) and requires evidence of bond coverage. The need for this information was implied in previous § 788.16(a)(4) and section 506(d)(1)(D) of the Act. Section 774.15(b)(2)(iv) requires proof of newspaper publication of the advertisement of the application. Section 774.15(b)(2)(v) requires the application to include such additional revised or updated information as determined by the regulatory authority. The need for such information was implied in previous § 788.16(a)(5) and section 506(d)(1)(E) of the Act.

One commenter noted that previous § 788.14(b)(4) should be reinstated to require the filing of additional bond when necessary. Another commenter believed that the application for renewal should include a description of any changes since the existing permit or renewal, in order to alert the agency and public.

One commenter suggested deletion of the requirement for proof of publication in § 774.15(b)(2)(iv), which was proposed as § 773.27(b)(2)(iv), because it is impractical to submit such proof with a renewal application since the application must be publicly available during advertisement.

Another commenter proposed to delete the proposed paragraph referencing § 773.13 which implied notice need not be filed until the permit application is judged administratively complete, but noted that the regulatory language suggests notice must accompany the application for renewal and therefore notice must be published prior to submittal of the application. The commenter urged that this confusion be eliminated.

One commenter noted that allowing the regulatory authority to require additional revised or updated information in § 774.15(b)(2), which was proposed at § 773.27(b)(2)(v), imposes no limit on the regulatory authority's power.

OSM rejected the comment to reinstate previous § 788.14(b)(4) since § 774.15(b)(1)(v) covers the requirement to file an additional bond when necessary. This is a permit condition, not an application requirement.

OSM has rejected the comment to require in the renewal application a description of any proposed changes. The mechanism for obtaining approval of proposed changes is § 774.13, "Permit Revisions," and § 774.15(b)(4) references that section. If the permittee requests revisions to the permit at the renewal stage, the burden of proof would be on the permittee for any portions of the permit being revised and on any opponents of renewal for the sections of the permit being renewed and not revised.

OSM agrees with the commenters that § 774.15(b)(2)(iv), which was proposed as § 773.27(b)(2)(iv), should be clarified. Thus, OSM has changed the language in this section to be consistent with changes made in § 773.13(a). The applicant must only submit a copy of the proposed newspaper notice with the application and proof of publication in accordance with § 778.21.

OSM has rejected the comment concerning the absence of limits on the power of the regulatory authority in § 774.15(b)(2)(v). The regulation implements section 506(d)(1)(E) of the Act, and OSM considers it inappropriate to place limits on the regulatory authority in this situation. The regulatory authority should specify requirements for revised or updated information as an application requirement if it is to make a finding on any such requirement later in accordance with section 506(d)(1)(E) of the Act.

Section 774.15(b)(3).

Section 774.15(b)(3) replaces previous § 788.17(b)(1) and provides that permit renewals will be subject to the full public notification and participation requirements of the regulations for permit approval.

One commenter noted that the application which is subject to public notice and comment must be complete. Another commenter expressed concern that if the renewal period differs from that in the original permit, it should be clearly spelled out in the applicable documents that are available to the public, and the public should have an opportunity to review them.

The subject of "completeness" and public notice is discussed above in reference to the definitions in § 701.5 for the terms "administratively complete application" and "complete and accurate permit application." The renewal application must be administratively complete before public notice is given and the process of reviewng the application begin. Section 774.15(b)(3), as well as final §§ 773.13 and 773.15, provides an opportunity for public review of applications for renewals consistent with the public review of new applications.

Section 774.15(d), discussed below, specifies that the term of a renewal may not exceed the term of the original permit. Any difference in the renewal term from the length of the original term would be noted by the regulatory authority.

Section 774.15(b)(4).

Section 774.15(b)(4) is a new provision that states that any permit revisions that may be included with the application for renewal are subject to the requirements for approval of permit revisions contained in § 774.13. Previous § 788.14(b)(2), which required proposals to extend the boundaries of the operation to be treated as a new permit application, is covered by §§ 774.15(a) and 774.13(d).

No comments were received on § 774.15(b)(4), which was proposed § 773.27(b)(4), but OSM decided to clarify that these revisions must be identified in the renewal application. Similar issues were discussed under § 774.15(b)(2), above.

Section 774.15 (c), (d), (e), and (f).

Section 774.15 (c), (d), (e), and (f) include, with some editorial revision, the requirements of previous §§ 778.16 (a) and (b), 788.14(b)(3), 788.15, 788.16(c), and 788.16(d), respectively.

Section 774.15(c) Approval process.

Section 774.15(c) provides the criteria for approval of permit renewals and the associated burden of proof.

Section 774.15(c)(1) Criteria for approval.

Section 774.15(c)(1) provides that a complete and accurate application for renewal of a permit shall be approved unless the regulatory authority finds that one or more of the conditions in Paragraphs (c)(1)(i–vi) are not satisfied. Paragraph (c)(1)(i) refers to the terms and conditions of the existing permit being satisfactorily met, which is the previous § 788.16(a)(1). Section 774.15(c)(1)(ii) provides for renewal approval unless present operations are not in compliance with the environmental protection standards of the Act and regulatory program, which is previous § 788.16(a)(2). Section 774.15(c)(1)(iii) provides for approval unless renewal substantially jeopardizes compliance with the Act and regulatory program on existing permit areas, which is previous § 788.16(a)(3). Section 774.15(c)(1)(iv) provides for approval of the permit renewal application unless the operator has not provided evidence of having liability insurance as required in revised final 30 CFR 800.60. This a new requirement added in conformance with final §778.18.

Section 774.15(c)(1)(v) provides for approval of the renewal application unless the operator has not provided evidence that the performance bond will continue to cover the operation, which is previous § 788.16(a)(4). Section 774.15(c)(1)(vi) provides for approval of the renewal application unless the operator has not provided any additional revised or updated information required by the regulatory authority, which is previous § 788.16(a)(5).

One commenter in responding to § 774.15(c)(1)(i), which was proposed at § 773.27(c)(1)(i), stated that the operation's compliance must be measured against the regulations of the Secretary, which are promulgated pursuant to the Act and bind the State and operator.

OSM rejects this comment. The rule follows the language of Section 506(d)(1)(A) of the Act exactly. Since the permit must be in compliance with the regulations and Act to be approved by the regulatory authority, there is no need for such a provision. Also, compliance with the performance standards of the regulatory program is a condition of the permit itself.

Several States had requested, prior to publication of the proposed rule, some guidance on the purpose and basis of the requirement appearing at final § 774.15(c)(1)(iii), which was proposed at § 773.27[c)(1)[iii). The provision is required by Section 506(d)(1)(C) of the Act and responds to Congressional concern that a permit renewal not jeopardize the operator's continuing responsibility to satisfy any remaining reclamation responsibility (H. Rept. 94–1445, 94th Cong., 2d Sess., pp. 44–45; H.R. Rept. 95–45, 94th Cong., 1st Sess., p. 89; H. Rept. 93–1072, 93d Cong., 2d Sess., p. 82). The emphasis of Congress in inserting such language into Section 506(d)(1) of the Act was not to require the regulatory authority to analyze the solvency of the company or its ability to continue mining but rather its ability to meet its reclamation responsibility. In this context, Congress did not intend the criteria for renewal to be more stringent than the criteria to issue a permit initially, since Section 506(d)(1) of the Act requires the burden of proof to be on the opponents of renewal. Thus, a

State, according to this rule, must find that the requested renewal would not jeopardize the operator's ability to conduct reclamation within the existing permit area.

Another commenter, in responding to § 774.15(c)(1)(vi), which was proposed at § 773.27(c)(1)(vi), asserted that each renewal application should include a showing that all performance standards can be met for the next 5 years. Another commenter stated that proposed § 773.27(c)(1)(vi) should be deleted because it allows the regulatory authority to require additional revised or updated information and imposes no limit on the regulatory authority's power.

OSM rejects the comment concerning § 774.15(c)(1)(vi) that each renewal application should be required to include a showing that all performance standards can be met for the next 5 years. The regulatory authority may require information relative to such a determination under paragraph (c)(1)(vi) and Section 506(d)(1)(E) of the Act, but the Act does not require such a showing for all renewal applications. Section 506(d)(1) of the Act specifies that the burden of proof is on the opponents of renewal.

OSM also rejects the comment to delete § 774.15(c)(1)(vi), as this section is a required by section 506(d)(1)(E) of the Act. The regulatory authority is not required to specify additional information to be supplied by the applicant. It is not appropriate for OSM to restrict the regulatory authority's discretion in the area of additional information needed under its program.

No comments were received for paragraphs (c)(1) (ii), (iv) and (v) of final § 774.25, which were proposed as paragraphs (c)(1) (ii), (iv) and (v) of § 773.27.

Section 774.15(c)(2) Burden of proof.

Section 774.15(c)(2), which states that the burden of proof shall be on the opponents of renewal, was proposed at § 773.27(c)(2) and included previously as § 788.16(b). No comments were received on this provision, and it has been adopted as proposed.

Section 774.15(c)(3) Alluvial valley floor variance.

Section 774.15(c)(3) contains a special alluvial valley floor variance provision, which is proposed § 773.27(c)(3) and previous § 788.14(b)(3). This provision allows an operation which has previously received a variance from the alluvial valley floor standards, in accordance with the proviso in Section 510(b)(5) of the Act, to continue that variance on lands previously identified in a reclamation plan but not yet mined.

One commenter suggested deleting the portion of the application for renewal that addresses "new" land area. The commenter believed that this is a "new and undefined term." The commenter stated that land area previously identified would not be new.

OSM rejected this comment, because the statutory language used in Section 506(d)(2) of the Act refers to "new land areas previously identified in the reclamation plan." The term "new land area" means the area not mined in the present term of the permit. This is not a new term and was used in previous § 788.14(b)(3). This concept is consistent with the concept of permit term and right of renewal, as discussed above in reference to § 773.19(a)(1). OSM has made editorial changes in this paragraph.

Section 774.15(d) Renewal term.

Section 774.15(d), which was proposed § 773.27(d), provides that any permit renewal shall be for a term not to exceed the period of the original permit established under § 773.19. This was the requirement of previous § 788.15.

No comments were received on this section, and it was adopted as proposed.

Section 774.15(e) Notice of decision.

Section 774.15(e), which was proposed § 773.27(e), requires the regulatory authority to send a notice of decision on the renewal application to the applicant, all commenters or objectors, and parties to any informal conference. This contains the same requirements as previous § 788.16(c).

No comments were received on this section and it was adopted as proposed with the addition of persons who file objections to those to be notified and notification of OSM if OSM is not the regulatory authority. The addition was necessary to conform with the terminology used in § 773.13(b) and to keep OSM informed of the status of permits.

Section 774.15(f) Administrative and Judicial Review.

Section 774.15(f), which was proposed as § 773.27(f), provides for administrative and judicial review of the decision on the renewal on the same basis as review of initial permit decisions. This section contains the same requirements as previous § 788.16(d).

No comments were received on this section and it was adopted as proposed.

Section 774.17 Transfer, Assignment, or Sale of Permit Rights.

Section 774.17, which was proposed as § 773.29, includes revisions of previous §§ 788.17, 788.18, and 788.19 regulating the transfer, assignment, or sale of permit rights. Section 774.17 (a) and (b) are a consolidation of previous §§ 788.17 and 788.18(a), with some editorial revisions.

Section 774.17(a) General.

Section 774.17(a) provides that no transfer, assignment or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. This is similar to previous § 788.17 with some editorial revisions.

No comments were received on this section, and it was adopted as proposed.

Section 774.17(b) Application Requirements.

This section contains the requirements an applicant for approval of a transfer, assignment, or sale of permit rights must meet.

OSM has decided to arrange Paragraph (b) in the order which the applicant will most likely undertake the requirements. Since the applicant is first required to submit an application, OSM renumbered proposed § 773.29(b)(2) as final § 774.17(b)(1). Because the applicant must then advertise the filing of the application, OSM has renumbered proposed § 773.29(b)(3) as final § 774.17(b)(2). Finally, the applicant is required to submit sufficient performance bond coverage; thus, OSM has renumbered proposed § 773.29(b)(1) as final § 774.17(b)(3).

Section 774.14(b)(1).

Section 774.17(b)(1) contains the application requirements for the transfer, assignment, or sale of permit rights, which were previously contained in § 788.18(a)(2). Section 774.17(b)(1)(i) includes the requirements of previous § 788.18(a)(2)(i) to provide the name and address of the existing permittee. In addition, this paragraph requires the permit number or other identifier, so that the operation can be accurately identified.

Section 774.17(b)(1)(ii) was proposed as § 773.29(b)(2)(ii) and requires a brief description of the proposed action requiring approval. This will better inform the regulatory authority as to what it is being asked to approve.

Section 774.17(b)(1)(iii) simplifies and consolidates the requirements for submittal of financial, legal, and compliance information contained in previous §§ 788.18(a)(2) (iii) and (iv).

The term "applicant" is used to refer to the person proposing to succeed to the permit rights by transfer, assignment, or sale. This is in keeping with the fact that such successor is applying for approval of rights in the permit.

No comments were received for final § 774.17(b)(1) (i) and (ii), which is adopted is proposed.

One commenter thought that final paragraph (b)(1) should require the name, address, and resident agent of the applicant applying for the transfer as required by previous § 788.18 (a)(2)(ii). Another commenter stated that final § 774.17(b)(1)(iii) must clearly provide that all the information in Part 778 be required for the applicant for approval of the transfer, assignment, or sale of permit rights, rather than the existing permittee.

The concerns of both commenters are covered in final § 774.17(b)(1)(iii), which requires the applicant for approval of the transfer to provide the information required in Part 778, such as name, address, and resident agent of the successor. To ensure that this point is clear, OSM has revised the language in final § 774.17(b)(1)(iii) to specify that the applicant mentioned is the applicant for approval of the transfer, assignment, or sale of permit rights.

Section 774.17(b)(2).

Section 774.17(b)(2) includes the newspaper advertisement requirements of previous § 788.18(b)(1), except that another identifier may be used in place of the permit number if the regulatory authority does not use permit numbers. Editorial changes have also been made.

No comments were received for this section, and it has been adopted as proposed, except for the reordering.

Section 774.17(b)(3).

The final rules delete the provisions in previous § 788.18(a)(1) relating to the options available for obtaining the necessary bond coverage since § 774.17(b)(3) requires the applicant for approval of the transfer, assignment, or sale of rights to obtain the appropriate bond coverage in an amount sufficient to cover the proposed operations in compliance with the bonding rules of Subchapter J. The applicant has the responsibility of obtaining a bond under Subchapter J. As long as a sufficient amount of bond is provided and the bond meets the requirements of Section 509 of the Act and Subchapter J of the rules, it does not matter how the bond is obtained, whether by transfer, written agreement, new bond, or obtaining a performance bond as set out in previous § 788.18(a)(1)(i–iv). Those paragraphs have therefore been deleted as unnecessary.

One commenter stated that final § 774.17(b), which was proposed as § 773.29(b), must clearly establish that the applicant shall obtain the necessary bond coverage, supply the required information, and gain approval prior to such transfer, assignment, or sale of rights as required in Section 511(b) of the Act. The commenter believed that a basic requirement should be that the successor make the showings required in Section 509 of the Act relating to bond coverage, prior to approval of a transfer, assignment, or sale of permit rights.

The commenter believed it is quite possible that even the previous rule was too liberal in allowing the permittee to transfer his interest in permit rights. The commenter stated that House Report 95–218 (95th Cong., 1st Sess., 1977), on page 93, reflects "grave concern" with adequacy of bond coverage for operations and suggests that the only permissible bond arrangement would be where the permittee's performance bond continues in full force and effect.

The commenter added that it is arguable whether OSM can allow replacement of a bond or transfer of liability and that if replacement or transfer is allowed, then the regulatory authority must assure that there is clear liability for all disturbances and alternative bond arrangements of the same or greater amount and degree of assurance.

In response to the comments concerning bonding, OSM notes that § 774.17(d)(2) requires submittal of a sufficient performance bond prior to approval of a transfer. OSM has rejected the comment that it should reinstate the requirements of previous § 788.18(a)(1). These requirements are covered in Subchapter J and need not be duplicated in the permit rules.

OSM has also rejected the comment which suggests that the only permissible bond arrangement would be where the permittee's performance bond continues in full force and effect. Page 93 of House Report No. 95–218, cited above, states that the successor in interest is "granted the right to continue the surface coal mining operation while his application for a permit is under consideration by the regulatory authority, so long as the operation is in compliance with the permittee's mining and reclamation plan and so long as the permittee's performance bond continues in full force and effect."

By recognizing that the permittee's performance bond was to continue while the application is under consideration by the regulatory authority, Congress clearly contemplated the possible transfer of both permit rights and bond liability. In order for the concept of a successor in interest to be workable, OSM must provide an option of allowing transfer of bond or thwart the intent of Congress. The transfer of bond assures there is clear liability for all disturbances and that there is a performance bond of the appropriate amount and same degree of assurance.

In some instances, replacement of the bond may provide greater assurance of reclamation than continuation of the original performance bond if intervening economic circumstances made the original bond inadequate. The reference in paragraphs (b)(3) and (d)(2) to the bonding requirements of Subchapter J ensure that the opertaon will be covered by a sufficient performance bond.

Section 774.17(c) Public participation.

Section 774.17(c) provides for public partcipation in the approval decision as provided for in previous § 788.18(b)(2). No comments were received on this section, and it has been adopted as proposed in § 773.29(c).

Section 774.17(d) Criteria for approval.

Section 774.17(d) establishes criteria for approval of tranfers, assignments, or sales of permit rights. In accordance with Section 511(b) of the Act, it provides that no transfer, assignment, or sale may be made without the written approval of the regulatory authority, but does not require a regulatory authority to approve such transfers, assignments, or sales. Thus, a regulatory authority may decide that it will not allow permit rights to be transferred, assigned or sold and will require instead that the proposed successor apply for a new permit.

Section 774.17(d)(1) is a new section requiring a finding that the successor in interest is eligible to receive a permit under the standards set out in § 773.15. Many of those standards for permit approval would be satisfied simply by the successor's agreement in the application for approval of the transfer, assignment, or sale to operate the mine in accordance with the existing permit. This would normally satisfy the requirements of § 773.15(c) (3), (4), (5), (6), (8), (9), and (10).

The requirements of § 773.15 (b) and (c)(1), (2) and (7) depend on the characteristics or past behavior of the individual operator rather than the plan for conducting the operation. Information on the successor's past history of violations is required to satisfy § 773.15(b). The application for approval should be complete and

accurate incompliance with § 773.15(c)(1). The regulatory authority may require additional information about the successor's ability to accomplish reclamation as described in the original approved permit or it may be able to find that reclamation can be accomplished based on the successor's agreement to operate according to the permit. The successor is also required by § 773.15(c)(7) to submit proof that it has paid all abandoned mine land reclamation fees that it is required to pay under Subchapter R.

Previous § 788.18(c)(1) which required a finding that the successor would comply with the standards specified in the permit approval rules, has been deleted as unnecessary since such compliance is required in the existing permit and by the terms of its approval. The findings in previous § 788.18(c)(2) have been included in the criteria of final § 774.17(d)(2). Instead of requiring the successor's bond to be at least equal to the bond of the original permittee, the new rule requires the successor's bond to be judged according to the standards of the bonding rules. This will better ensure that the amount of the bond is sufficient. As rewritten, paragraph (d)(2) also includes the provision of previous § 788.19(a) allowing the successor to obtain the bond of the original permittee.

Section 774.17(d)(3) is also new and recognizes that the regulatory authority may impose additional requirements for approval of transfers, assignments, or sales of the permit rights.

One commenter noted that the reference in § 774.17(d)(1), which was proposed as § 773.29(d)(1), to § 773.15(b) requires a showing by the applicant that any violation pertaining to a surface coal mining and reclamation operation owned or controlled by the applicant has been corrected or is in the process of being corrected or is the subject of an appeal. The commenter noted that this would appear to require the successor to show that violations on the *successor's other operations* have been corrected or are being corrected or appealed. The preamble to the proposed rule, however, stated that paragraph (d)(1) is meant to "ensure that the operators not transfer, assign, or sell permit rights to avoid correcting violations." The commenter stated that this seems to say that paragraph (d)(1) is addressed to violations on the permit which is being transferred. The commenter believed the regulation and the preamble should clarify that the violations referred to are those on the successor's other operations.

The commenter believed that paragraph (d)(3) should be modified to require that "If violations exist on the permit area, the regulatory authority may require that immediately upon transfer the violations be corrected or that interim measures be taken to avoid environmental harm." The commenter also stated that there are other conditions of permit approval that should be applicable, such as the requirement that the successor should not be deliquent in payment of reclamation fees. He suggested that an additional item be added to cover all applicable permit conditions. The commenter suggested approving a transfer only if the successor would be eligible to receive a permit in accordance with § 773.15.

OSM agrees with the commenter that the applicant (successor) must show that the violations on the successor's other operations have been corrected or are being corrected or appealed so that the provisions of § 773.15(b) are met. OSM has accepted the commenter's suggestion that a transfer, assignment, or sale of permit rights be approved only if the successor would be eligible to receive a permit under § 773.15 (b) and (c). There is no need to incorporate § 773.15(d) in final § 774.17(d)(1) because bonding requirements are addressed in § 774.17(d)(2).

The commenter makes a valid point that the language of the proposed rule and its explanation in the preamble were inconsistent. The change to § 774.17(d) (1) described above ensures that the successor has an acceptable compliance record on its other operations but leaves the problem of transfers to avoid correcting violations unaddressed.

OSM has decided not to include a provision requiring the successor to correct existing violations immediately upon transfer of the permit. The permittee, whether it is the original permittee or the successor, has a continuing obligation to comply with the regulatory program and to correct any outstanding violations. There is no need for further sanctions against an operation beyond those provided in the provisions on enforcement of the regulatory program.

Section 774.17(e) Notification.

One commenter believed a new subsection should be added to final § 774.17, which was proposed § 773.29, providing that the successor give notice to the regulatory authority of the consummation of the transfer, assignment, or sale of rights, because the rule as proposed would require that the permittee receive prior written approval of the transfer, but does not require notice to the regulatory authority once the transfer is actually made between the parties. There could thus be the possibility that the transfer was approved but not completed, and an issue might arise as to which party was actually conducting the mining on the permit area.

OSM agrees with the commenter that the successor should notify the regulatory authority when the change officially occurs. This will allow the regulatory authority to make an orderly transition in terms of its own records and will eliminate confusion as to which party is responsible for the operation.

This completes the process of changing from one permittee to another in compliance with Sections 511(b) and 506(b) of the Act.

Under § 774.17(e)(1), the regulatory authority must notify the permittee, successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings with respect to the application. It is only logical that the regulatory authority must notify the permittee and successor of its decision. Commenters should also be notified as provided for with respect to applications for permits, renewals, and revisions under § 773.18(b). Also, OSM needs to be kept informed of such decisions when it is not the regulatory authority.

Section 774.17(f) Continued operation under existing permit.

The requirements of previous § 778.18(c)(3) have been incorporated in final § 774.17(f) as a condition for continued operation under the existing permit. The term "original permit" in previous § 788.18(c)(3) has been changed to "existing permit" to avoid confusion since the original permit could have been revised by the prior permittee. Previous § 788.19(b) has been deleted, since its requirements are included in final § 774.17(f) which requires the successor to obtain a new or revised permit in compliance with Subchapter G if he wishes to deviate from the terms of the existing permit. Previous §771.21(b)(4) has also been deleted as unnecessary. The successor is required to operate under the existing permit until he obtains a revision or new permit, so specifying time frames for applying for a revision is not necessary.

No comments were received on this paragraph, and it was adopted as proposed (§ 773.29(e)) except that it was renumbered as § 774.17(f).

D. Part 775—Administrative and Judicial Review of Decisions

Section 775.1 Scope and purpose.

Section 775.1 provides the scope and purpose of Part 775. It is previous § 787.1 and was proposed as part of § 773.1. No comments were received on this section.

Section 775.11 Administrative review.

Section 775.11(a) General.

Section 775.11(a), which was proposed as §773.21(a), deals with the rights to administrative review of permit decisions. This section is the previous §787.11(a), with minor editorial changes. The word "final" has been deleted and will no longer modify "decision." If a permittee seeks an appeal of the regulatory authority's initial decision, that appeal is brought before the regulatory authority and its decision is therefore not "final" until after issuance of the decision on the appeal.

One commenter concurred with the deletion of the term "final." Another commenter believed that, in the interest of using terms which are defined in the rule, the rules should refer to a "person with an interest which *is* or may be adversely affected."

Another commenter objected to "any person with an interest which may be adversely affected may request a hearing on reasons for the decision." He felt that this concept opened the permit process to unending delays through frivolous requests for hearings.

Several commenters proposed to add a modifying phase to exploration—"operations where more than 250 tons of coal are to be removed." Others wanted to add the phase, "explorations which substantially disturbs the land."

OSM agrees with the comment that the phase granting standing for administrative review should be "any person with an interest which *is or* may be adversely affected" since that is the language of Section 514(c) of the Act. OSM disagrees with the commenter who wanted to eliminate the opportunity for such a person to request a hearing, because that right is authorized in Section 514(c) of the Act.

OSM has agreed to add a reference to Part 772 concerning exploration operations. This provision applies only where approvals of exploration is required under Part 772.

Section 775.11(b) Administrative hearings under State programs.

Section 775.11(b)(1).

Section 775.11(b)(1), proposed as § 773.21(a)(1), deals with the time period for commencing an administrative hearing and the nature of the hearing itself. It is the same as previous § 787.11(b)(1), with minor editorial changes. The hearing must be started within 30 days of the request, be on the record, and be adjudicatory in nature. In addition, no person who presided at an informal conference shall preside at the hearing or participate in the decision or any decision on an appeal. No substantive comments were received on this section.

Section 775.11(b)(2).

Section 775.11(b)(2), which deals with conditions for temporary relief, is derived from previous § 787.11(b)(2).

One commenter stated that an ongoing initial program operation, faced with a negative initial administrative decision, will have little or no chance of obtaining emergency relief under the procedures set forth in §§ 775.11 and 775.13, which were proposed § 773.21 (a) and (b). The commenter believed that an emergency, streamlined process should be provided for mine operators to obtain permission to continue operations pending final denial. The example given was to allow operators to continue mining for 10 days after receipt of an adverse initial decision, and provided the operator files a request for emergency relief within 30 days, he would be allowed to continue until his request was decided.

The commenter believed the burden of proof for such requests for permission to continue until final decision should be drastically less than set forth in Part 777 (proposed § 773.21) and that a "substantial likelihood of prevailing on the merits" is both impossible to show and inappropriate in view of the nature of the status quo which he believed, assumes an existing, complying mine. The commenter suggested that an appropriate standard would be for an operator to show (1) that no permanent, irreparable, and substantial damage is likely pending appeal; (2) that the balance of hardships and public interest favor continued mining, pending appeal; and (3) that the operator's appeal presents a "legitimate argument" constituting "fair ground for litigation on the merits." The commenter believed that this burden is akin to that employed in the Federal courts for the granting of emergency injunctive relief and that no higher burden is needed. The commenter suggested that OSM should clarify that the prohibition in § 775.11(b)(2)(iv), proposed § 773.21(a)(1)(ii)(D)—that the relief sought must not be the issuance of a permit where a permit has been denied—does not mean that a valid initial program operation may not continue under its existing initial program permit pending a final administrative resolution of its application for a permanent program permit. The commenter believed that the granting of such relief to continue operating pending final decision would not be the "issuance of a permit," but that this point should be made explicit in the rules.

The commenter stated that Section 506(a) of the Act provides that persons with initial program permits may continue operations until an initial administrative decision has been rendered, but that it does not *require* that initial program operations be closed down after an initial adverse decision is rendered. The commenter stated that still less does it require that OSM issue such an "initial" decision on the same grounds that it might apply to mines that were not yet existing. The commenter believed existing operations may lose their automatic right to proceed upon issuance of an administrative decision, but stated that OSM may, as suggested above, provide procedures for their continued operation pending appeal, upon appropriate showings.

Section 506(a) of the Act allows a permittee with a permit issued in accordance with the initial program to continue operating beyond the 8-month period allowed for decisions on permanent program permit applications if an initial administrative decision has not been rendered. As the commenter suggests, operation pursuant to an initial program permit would be able to continue *during* the 8-month period for decisions, even if an initial administrative decision on the application was negative.

OSM agrees with the commenter that the status quo for an existing operation with a valid permit under the permanent program would be an operating mine. As discussed in the preamble to the previous rule at 43 FR 41727–41728, general principles of administrative law provide that temporary relief is available only to restore parties to the status quo prevailing prior to the governmental decision from which relief is sought. OSM reaffirms its statement at 44 FR 15105 that because existing initial program operations would not have held permanent program permits, there would be no status quo to restore.

OSM disagrees with the commenter's interpretation of the exception in Section 506(a) of the Act for permitted initial program operations. The Act allows an initial program operation to continue *"if* an application for a permit has been filed * * * *but the initial administrative decision has not been rendered."* (Emphasis added.) OSM believes that this language does require

that such operations be shut down if an adverse decision is rendered and the 8-month period has already passed.

The Act allows initial operations to continue under two conditions: (1) if an application for a permit has been filed and (2) if the intial administrative decision has not been rendered. If either of the conditions is not satisfied, the operator loses the privilege granted by Section 506(a) of the Act to operate beyond the normal time limit.

Granting temporary relief from an initial administrative decision would be inconsistent with the second of the two conditions.

Applications for renewal of a permanent program permit present a different status quo than initial program operations seeking their first permanent program permit. Since these operators are authorized to operate under the permanent program, their status quo is an operating permitted mine. Of course, such operators may continue under their existing permit until it expires even if the initial administration decision is to deny the renewal.

Temporary relief should not be necessary in the majority of cases if the operator files the renewal application sufficiently in advance of the end of the current permit term to account for the time involved for governmental action and its appeal processes. The discretionary authority granted to the regulatory authority by Section 514(d) of the Act and § 775.11(b)(2), to prescribe such relief "as it deems appropriate," provide sufficient flexibility to avoid most potential problems in renewal situations. For example, the regulatory authority might deem it appropriate that an operator continue reclamation activities or work to correct outstanding violations pending a hearing on the merits of a denial of a renewal application. Such limited continued operations might be necessary to protect the public health and safety or the environment, but would not constitute the issuance of a permit allowing full operations. For those situations where such limited relief would be insufficient, OSM has modified § 775.11(b)(2)(iv) to give regulatory authorities the discretion to grant temporary relief that would allow the operation to continue under its previous permanent program permit until a decision is rendered on the merits of the appeal of the renewal denial.

The third possible situation is that of denial of a permit for an entirely new operation. OSM has not modified the prohibition against granting temporary relief to such applicants. As was explained in the preamble to the previous proposed rule (43 FR 41727–41728, September 18, 1978), the status quo in such situations does not include authorization for mining operations to proceed. OSM continues to interpret Sections 102 (b), (c), (d) and (e); 201(c); 507, 508, and 510 of the Act to require that coal mining be allowed only after the regulatory authority has carefully scrutinized the application and determined that the provisions of the Act will be met and that reclamation of the area to be disturbed is feasible. OSM still believes that a full adjudicatory hearing on the merits is necessary to provide the careful scrutiny essential before a decision is made to reverse a determination that reclamation will not be feasible.

OSM has not adopted the commenter's suggested changes in the standards for granting temporary relief except as noted above. The standards set in § 775.11(b)(2) (i)–(iii) are taken from Section 514(d) of the Act which limits the granting of temporary relief to cases which meet these conditions. OSM also notes that the standard of proof in paragraph (b)(2)(ii) is similar to the standard for emergency injunctive relief in Federal courts.

Sections 775.11(b) (3)–(5).

Section 775.11(b)(3), which deals with the powers and responsibilities of the hearing authority, the record of the hearing, and ex parte contacts, is the same as previous § 787/11(b)(3), with minor editorial changes. Section 775.11(b)(4), which deals with the responsibilities of the hearing authority, is the same as previous § 787.11(b)(4). Section 775.11(b)(5), which assigns the burden of proof, is the same as previous § 787.11(b)(5).

No comments were received on § 775.11(b) (3)–(5), and these paragraphs will remain unchanged from the proposal.

Section 775.11(c) Administrative hearings under Federal programs and Federal lands programs.

Section 775.11(c), which was proposed § 773.21(a)(2), is the same as previous § 787.11(c), with the changes described below. This section identifies the applicable requirements for hearings on permit applications under Federal programs and Federal lands programs except as may be modified by a cooperative agreement. The standards of 5 U.S.C. 554 apply to such hearings.

One commenter opposed the requirements that 5 U.S.C. 554 and 43 CFR Part 4 govern administrative hearings pertaining to Federal lands. The commenter stated that when a State has a cooperative agreement, only State hearing procedures should apply. The commenter believed that the person protesting should not be authorized to choose his forum or allowed two "bites of the apple" by pursuing State and Federal administrative review.

OSM agrees with the commenter that, depending on the terms of the cooperative agreement, the State administrative procedures could apply. However, OSM must, through approval of the regulatory program and cooperative agreement, assure that administrative procedures as effective as those of the Administrative Procedure Act (APA) would apply. Thus, OSM has changed this section by adding that a cooperative agreement may specify which hearing procedures will apply on Federal lands when the regulatory authority is the State. The standards of 5 U.S.C. 554 (Section 5 of the APA) and 43 CFR Part 4 apply where there is a Federal program and on Federal lands where there is no cooperative agreement or where the cooperative agreement does not provide for the applicability of alternative administrative procedures.

Section 775.13 Judicial review.

Section 775.13, which was proposed § 773.21(b) covering judicial review, is basically the same as previous § 787.12.

Section 775.13(a) General.

Section 775.13(a), which sets out the requirements for standing to seek judicial review of permit decision, is the same as previous § 787.12(a), with minor editorial changes.

One commenter thought there should be reference in paragraph (a) to "paragraph (b) or (c)." The commenter also believed that § 775.13(a)(2), which was proposed as § 773.21(b)(1)(ii), is unclear as to which of the many time limits under the Act is referenced.

The commenter is correct that there should be a reference in paragraph (a) to paragraph (b) or (c), as was provided in previous § 787.12(a). OSM also agrees with the commenter concerning the need to specify the time limits, so the word "applicable" was added to clarify this section.

Section 775.13(b) Judicial review under State programs.

Section 775.13(b) is the same as previous § 787.12(b)(1), with editorial and citation changes. Section 775.13(b) deals with judicial review under State programs. No comments were received on this section, and the rule has been adopted as proposed.

Section 775.13(c) Judicial review under Federal programs and Federal lands programs.

Section 775.13(c) is the same as previous § 787.12(b), with one substantive change and editorial and citation changes. Section 775.13(c) provides for judicial review under Federal programs and Federal lands programs.

Two commenters stated that when a State has a cooperative agreement, judicial review should be in a State, not Federal court.

OSM agrees with the commenters that, depending on the terms of the cooperative agreement, judicial review of State regulatory authority actions under the Federal lands programs should be in the State courts. However, OSM must, through approval of regulatory programs and cooperative agreements, assure that judicial review as effective as that provided by the Federal regulations will occur. To clarify that cooperative agreements may provided for judicial review by State courts, OSM has added a clause to this provision. Judicial review will be by Federal courts where there is a Federal program or, for Federal lands, where there is no cooperative agreement or the cooperative agreement does not allow for the State court review.

As revised, this provision is consistent with Section 526 of the Act and OSM's revised Federal lands program (48 FR 6912, February 16, 1983). Under the new Federal lands rule, there may be certain instances where a permit may be issued for surface coal mining operations on Federal lands without Secretarial approval of the permit under the Act. In such instances, Section 526(e) of the Act requires State court review.

E. Part 777—General Content Requirements for Permit Applications

Section 777.1 Scope.

General content requirements for permit applications previously set out under §§ 771.1 and 771.2 have been combined under the heading "Scope" in final § 777.1, for simplicity and elimination of excess verbiage. This section states that Part 777, which was proposed Part 775, establishes minimum requirements for the general content of permit applications under a State or Federal program.

No substantive comments were received for this section, and OSM has adopted this section as proposed.

Section 777.10. Information collection.

This section codifies approvals by the Office of Management and Budget. No comments were received on this section, which was proposed as § 775.10.

Section 777.11 Format and contents.

Section 777.11(a).

Section 777.11 covers the format and contents of applications, which were given in previous § 771.23. The requirements of previous § 771.23(b) have been reworded and reorganized into separate paragraphs in final § 771.11(a). Section 777.11(a)(1) incorporates the requirement in previous § 771.23(b) that the applications contain current information but also clarifies that such information must be submitted in keeping with the more specific permit information requirements of Subchapter G. Section 777.11(a)(2) contains the requirement in previous § 771.23(b) that applications be clear and concise. The provision in previous § 771.23(a) that applications must be filed in the format required by the regulatory authority has been transferred to § 777.11(a)(3).

Several commenters wanted deletion of the terms "adjacent area" and "potentially impacted offsite area" used in proposed § 775.11(a)(1), which is final § 777.11(a)(1). These commenters claimed that the rationale for using these terms was vague and that the latter was an undefined term. The commenters also stated that the District Court for the District of Columbia has held that Sections 507 and 508 of the Act require information pertaining to areas outside the permit area only for hydrologic information.

One commenter suggested deleting proposed paragraphs (a)(1) and (a)(2) because an application would have to contain current information to make the required determinations and because the terms "clear and concise" are subjective.

OSM has dropped the term "potentially impacted offsite area" because it is an undefined term. The terms "adjacent area" and "permit area" are replaced by the phrase "as required by this subchapter" to indicate that information off the permit area must be submitted only as required by specific permit information rules and also assure that all required information, such as the legal, financial, and compliance information not restricted to the proposed permit area, is provided.

OSM has decided not to delete the requirement that permit applications be clear and concise because clear and concise applications will reduce the time necessary to review and make decisions on the applications. These terms have well established and understood meanings.

Section 777.11(b).

Section 777.11(b) is a new section which gives the applicant instructions on how to present reference material in the application. References must either be available to the regulatory authority or be provided by the applicant. If provided by the applicant, they may be abstracted or the relevant portions may be photocopied. This rule ensures that the regulatory authority has access to all the technical information relied upon by the applicant.

One commenter supported the change on referenced materials. Several commenters suggested modifying the second sentence of § 777.11(b) which was proposed § 777.11(b), to limit photocopying of referenced materials to only those materials that are not readily available to the regulatory authority. They believed this would eliminate unnecessary burdens on operators holding several permits as they could reference much of the general information that would be identical for each operation. Other commenters supported the proposal to not require referenced materials to be included in the permit application if they were readily available to the regulatory authority.

OSM agrees that the second sentence of proposed § 777.11(b) needed modification to be consistent with the first sentence and the preamble. To clarify that applicants are not required to submit reference materials if the application includes all needed information, the rule has been changed to read: "If used in the application, referenced materials shall either be provided . . . or be readily available to the regulatory authority. If provided, relevant portions . . . shall be presented . . . by photocopying or abstracting and with explicit citations." This clarifies the intent of the section to reduce the burden on applicants.

Section 777.11(c).

Previous § 771.27, requiring applications to be verified by an official of the applicant, has been transferred to final § 777.11(c). No comments were received on this section. OSM has adopted the rule as proposed with the addition of language clarifying that this section applies to all applications for action on a permit including permit revisions, permit renewals, and transfers, sales and assignments of permit rights.

Section 777.13 Reporting of technical data.

Section 773.13(a).

Previous § 771.23(c), which required that data be identified by date and methodology, as well as requiring the name of the person who collected or analyzed the data, has been transferred to § 777.13(a), which was proposed as § 775.13(a).

One commenter suggested that a definition is needed for "technical data," since there is an explict requirement for certification of the data. Another commenter wanted this section to include the requirement of previous § 771.23(d) that the name and address of officials consulted in preparation of the application be provided so the regulatory authority can determine if the information provided is accurate.

OSM does not agree that a definition of "technical data" is needed here or in § 701.5. However, OSM wants to clarify that technical data includes all information required for Parts 779, 780, 783, 784 and 785.

OSM has decided not to require inclusion of names and addresses of consulting officials since any technical investigation must be planned by qualified individuals. Regulatory authorities may, of course, request the names if they feel the need for further verfication.

Section 777.13(b).

Section 777.13(b), which was proposed as § 775.13(b), is a new section which identifies who should plan and conduct technical analyses.

Two commenters stated that the requirement in the proposed section that technical investigations be planned, directed, and certified by a qualified registered professsional engineer or professional geologist violated Section 702(a)(2) of the Act which provides that nothing in the Act shall supersede, amend, modify, or repeal any provisions of the Federal Coal Mine Health and Safety Act of 1969 (FCMHSA) or its rules. The commenters stated that maps prepared for and required by the FCMHSA should be acceptable under the Surface Mining Act without certification by a professional engineer or professional geologist.

Numerous commenters objected to the proposed requirement in the section that all technical investigations be planned by, or under the direction of, and certified by a qualified registered professsional engineer or geologist. These commenters gave several reasons for deleting or modifying this requirement.

First, they argued there is no guarantee that any aspect of an investigation would benefit from the proposed rule. Second, the rule was not cost effective. Third, State regulatory authorities do not have similar requirements. Fourth, the specified personnel are not available. Fifth, the applicant's personnel are the most experienced and qualified to direct technical investigations. Other commenters suggested that other disciplines such as soil and environmental scientists, biologists, archeologists, and land surveyors should be the technical personnel to direct and verify the technical investigations in their respective fields rather than professional engineers or professional geologists who are not qualified in these fields. Alternative regulatory language was suggested which would require that technical investigations be directed and certified by the appropriate qualified professional. Sixth, Federal law is in direct conflict with State law in 13 States, which specifically limit the preparation and certification of property maps to professional land surveyors. Other commenters wanted the section deleted completely.

Other commenters objected that the proposed rules prevented land surveyors from performing their traditional function of preparing maps for coal mines. These commenters suggested alternative language which would allow maps, plans, and cross sections to be planned, directed, and certified by a professional licensed or qualified to make such certification under State law. These commenters believed that surveyors should be specifically included as such qualified professionals. One justification given for this was that Section 507(b)(14) of the Act is ambiguous in requiring professsional engineers to certify maps, plans, and cross sections. Land surveying, it was argued, is a branch of engineering and could, therefore, be added as one of the certifying professions without changes to the Act. Other commenters recognized that Section 507(b)(14) of the Act clearly limits direction and certification of maps and cross sections to professional engineers and geologists. They suggested that OSM pursue a change in the statute.

Section 507(b)(14) of the Act specifies that maps and cross sections be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist. The type of information to be included on such maps and cross sections is spelled out in detail in that section and is not necessarily the same information provided on maps prepared under the Federal Mine Safety and Health Act of 1977 (FMSHA), the successor to the FCMHSA. It may be possible to use such maps to meet the requirements of both Acts, but the map certification requirements of Section 507(b)(14) must still be met. The requirement that maps used to meet the requirements of the Surface Mining Control and Reclamation Act be certified by a qualified professional engineer or professional geologist does not in any way amend or repeal the FMSHA or any of its rules concerning maps.

OSM has adopted the suggestion that this section be modified to allow technical analyses or investigations to be directed by qualified professionals in their field of expertise. These analyses may include any scientific or technical studies or tests necessary to comply with the technical or environmental information requirements of Parts 779, 780, 783, 784, or 785, except those performed to comply with Section 507(b)(14) of the Act.

Under Section 507(b)(14) of the Act, cross sections, maps, or plans of the land to be affected must be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture. These requirements are covered in §§ 779.25 and 783.25 which were not proposed to be amended. Because §§ 779.25 and 785.25 are not changed by these rules, the comments suggesting that Section 507(b)(14) is ambiguous and would allow land surveyors to prepare such plans where a State considered surveying to be a branch of engineering have not been reached. Such considerations are more appropriately addressed in the context of the State program involved. At a minimum, land surveyors may prepare such maps under the direction of and if certified by the proper registered professional. In addition, land surveyors may prepare the maps required in §§ 779.24 and 783.24. The maps required by these sections are the type land surveyors have traditionally prepared since they deal with locations of buildings and other land surface features and boundaries. On the other hand, the cross-sections and plans required by §§ 779.25 and 783.25 include items not within surveyors' traditional areas of expertise such as location of aquifers, nature of the stratum below the coal seam, quality of subsurface water, and the elevation of the water table. For

these reasons OSM has decided not to adopt the suggestons of the commenters.

Section 777.14 Maps and plans: General requirements.

Section 777.14, which is previous § 771.23(e), deals with the general requirements for maps and plans to be submitted in the permit application. This section requires all maps submitted with an application to include the same information as is set forth on topographic maps of the U.S. Geological Survey. Specific map scales are also set depending on whether the map is of the permit area or some other area. Finally, all maps must distinguish between phases of the operation showing areas mined prior to August 3, 1977, prior to May 3, 1978, prior to approval of the permanent regulatory program, and after the estimated date of issuance of a permanent program permit.

One commenter stated that this section needed to be included in these final rules to ensure uniformity in map preparation. OSM agrees and has retained the standards for maps and plans.

Section 777.15 Completeness.

Section 777.15 requires all applications to be complete and, with some reorganization, transfers the second sentence of previous § 771.23(a) to final § 777.15.

Several commenters correctly noted that the proposed reference to Part 782 in paragraph (b) would be inappropriate if Part 782 was combined with Part 778 as proposed.

In keeping with the final rules adopted which includes the provisions from previous Part 782 in final Part 778, OSM has changed the reference in Paragraph (b) to Part 778.

OSM has adopted this section as proposed.

Section 777.17 Permit fees.

Previous § 771.25, requiring applications to be accompanied by a permit fee, has been transferred, with minor editorial changes, to final § 777.17.

One commenter objected to any requirement for permit fees on the theory that the government realizes more money through taxation than can be justified for the surface coal mining program.

Section 507(a) of the Act requires each permit application to be accompanied by a fee, the amount of which is to be determined by the regulatory authority. Section 777.17, which is similar to § 771.25 of the previous rules, implements the statutory requirement. The purpose of the permit fee is to offset the cost of processing and enforcing the permit. Therefore, the regulatory authority may not set the fee higher than its administrative and enforcement costs but may set a lower fee in its discretion. OSM is currently in the process of developing permit fees applicable to Federal programs and to permits for Indian lands.

F. Part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Information submitted in permit applications under Part 778 will be used primarily to enable the regulatory authority and the public to ascertain the nature of the entity which plans to mine coal and those entities which have financial interests and public record ownership interests in both the mining entity and the property which is to be mined. In addition, other nontechnical information needed for processing and approval or disapproval of the application is required. Part 778 will incorporate previous Part 782 on underground mining permit applications—minimum requirements for legal, financial, compliance and related information. Following is a discussion of the rules adopted and responses to comments received on the proposed rules.

In response to comments received on proposed Part 778, some minor changes have been made to the final rules.

Section 778.1 Scope and purpose.

To avoid repetition final § 778.1 combines previous §§ 778.1, 778.2, 778.4 and 778.11 as well as the comparable sections in previous Part 782. Only minor editorial changes have been made from the proposed rule.

Section 778.10 Information collection.

This section codifies approvals of information collection requirements by the Office of Management and Budget. No comments were received on this section. It has been adopted as proposed with the additional citations to the Act.

Section 778.13 Identification of interests.

Section 778.13 requires an applicant to provide specific information regarding the proposed surface coal mining operation, including type of ownership of the applicant, names and addresses of the principals involved, information on the mining history of the applicant, information on the surface and mineral properties, Mine Safety and Health Administration (MSHA) numbers, and interests held by the applicant on lands contiguous to the area to be mined.

Three commenters proposed adding the words "or reference" following "contain" in the introductory sentence. The commenters stated that the change would make it clear that materials, such as other permit applications, already in the regulatory authority's possession could be cross-referenced. They thought that the change would save operators and regulatory authorities time, money, and unnecessary burden by eliminating the need to duplicate material already on file.

The commenters also believed the change would be consistent with the August 21, 1979, Order of the District Court for the District of Columbia which held that an applicant may incorporate data already in the possession of the applicant or regulatory authority by references in its permit application. (See, *In re: Permanent Surface Mining Regulation Litigation*, No. 1144, D.D.C. August 21, 1979, (order on motions for preliminary relief).)

Section 777.11 of the final rules covers the general format and content of a permit application. Section 777.11(b) allows cross references wherever feasible to eliminate burdens, increase efficiency, and reduce expenses associated with filing applications. It is not necessary to repeat this provision in Part 778. However, because much of the information requested in Part 778 is subject to change, applicants are cautioned that § 777.11(a) requires submitted materials to be current. Therefore, updating the information provided in a given application may be necessary.

Section 778.13(a) requires a statement identifying the applicant's type of business entity. Section 778.13(b) requires the names, addresses, and telephone numbers of the applicant, the operator, and the resident agent. No comments were received on these paragraphs. The rules and preamble as proposed remain valid and are adopted as final.

Section § 778.13(c) requires applicants, other than single proprietorships, to provide the names and addresses for each officer, partner, principal shareholder, and director, and the names under which the applicant, partner, or principal shareholder previously operated a surface coal mining and reclamation operation with the 5 years preceding the date of application.

Without elaborating further, one commenter thought that the previous § 778.13(c) should be reinstated. Another commenter supported deleting the provision. The information being requested in final § 778.13 aids in

meeting the requirements of Section 507(b)(4) of the Act. The final rule is adopted as proposed.

Section § 778.13(d) requires a statement identifying any pending surface coal mining permit applications and all current and previous permits held by the applicant, partner, or principal shareholder during the 5 years preceding the application.

One commenter supported the 5-year limit as more realistic and less burdensome than the time frame set by the prior rule. OSM agrees with this comment and has, therefore, adopted the provision as proposed.

Section § 778.13(e) requires the names and addresses of each legal or equitable owner of record of the surface and mineral property to be mined, the holder of record of any leasehold interest, and any purchaser of record under real estate contract for the property to be mined. This section combines the requirements of previous § 778.11(a)(2–4).

A commenter suggested deleting the phrase "or equitable." In the commenter's opinion, requirement did not appear in the Act and locating all equitable owners would be extremely difficult and burndensome. The same commenter suggested changing the word "property" to "estate" to avoid confusion and to reflect more accurately the type of information required. Another commenter wanted the term "leasehold interest" defined to exclude subsurface noncoal leasehold interest (i.e. oil and gas leases).

It is important for the regulatory authority to have information about the equitable owners of record of the property to be mined so as to locate them easily if their interests would be adversely affected by the proposed operations, and, in the event of issuance of a notice of violation, to locate all potentially responsible parties. This requirement should not pose an additional burden on applicants, because equitable owners of record can be identified at the same time that legal owners of record are identified during searches of the public property records.

OSM has retained the word "property" as the word is more generally understood. Furthermore, the word "estate" could be interpreted to apply only to coal whereas the word "property" is more readily understood to include surface rights. Additionally, Section 507(b)(1) of the Act does not differentiate between coal and noncoal leasehold interests. For further discussion of these issues, refer to the previous response to comments for definitions at § 701.5.

Section § 778.13(f) requires information identifying contiguous property owners. No comments were received on the section. OSM has adopted the section as proposed.

Section § 778.13(g) requires Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures. Two commenters suggested modifying the language so that MSHA numbers would be provided "if available" because the numbers might not be available at the time an application is filed.

This suggestion is rejected. The information is needed to aid the regulatory authority in coordinating its review of the permit application with MSHA so that any potential conflicts between the regulatory requirements of the Mine Safety and Health Act and the Act can be resolved. Including the recommended phrase would weaken the intent of the rule and possibly encourage applicants not to submit the MSHA numbers. These numbers must be submitted as soon as they are known to the applicant if not available at the time initial filing of the application.

Section § 778.13(h) requires information about the applicant's interests in lands contiguous to the area to be mined and provides that the applicant may request that this information be held in confidence. No comments were received on this section. OSM has included a cross reference to the rule concerning confidentiality. Except for this addition, the section has been adopted as proposed.

Section 778.14 Violation information.

The basic purpose of § 778.14 is to secure information for the regulatory authority about whether the applicant has violated any rules or laws pertaining to air or water environmental protection, applicable health and safety standards, or any provision of the Act.

Section 778.14(a).

Section 778.14(a) implements Section 507(b)(5) of the Act and requires a statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has had a permit suspended or revoked within the preceding 5 years or a bond or any security forfeited at anytime.

One commenter wanted OSM to clarify what was meant by the phrase "persons . . . under common control with the applicant." The commenter assumed that the proposal required the indentification and disclosure of entities which have some controlling person in common with the applicant, i.e., director, officer, principal, or principal shareholder. The commenter suggested that the "controlling" person need not hold the same position in each entity, but must hold some controlling position in all.

The phrase "persons controlled by or under common control with the applicant" is taken directly from Section 507(b)(5) of the Act. The commenter is partially correct in assuming that directors, officers, principals, or principal shareholders are included in the category of persons under common control with the applicant. In addition, persons controlled by the applicant could also include the operator if other than the applicant, even though such a person may not hold some controlling position in any entity. "Persons controlled by" the applicant could also include operators of mines other than the proposed mine. The intent of this rule is to require information that will allow the regulatory authority to make its determination concerning the past history of compliance by the applicant or other persons actually conducting the surface coal mining and reclamation operation and any other persons whose actions are controlled by the applicant or controlled by someone who also controls the applicant as required by Section 510(c) of the Act. OSM has made no changes to the proposed rule based on this comment.

One commenter supported the proposed 5-year time limit as being more realistic and less burdensome for information on permit suspensions, revocations, and bond forfeitures. Another thought that the 5-year limit appearing in Section 507(b)(5) of the Act applied only to permit suspensions and revocations, and not to bond forfeitures.

OSM has reconsidered the proposed 5-year limitation on bond forfeitures and agrees with the interpretation that the 5-year limit in Section 507(b)(5) of the Act applies only to permit suspensions and revocations and not to bond for forfeiture. Bond forfeiture is serious enough that the full history of such actions should be known and explained as required in Section 507(b) of the Act. The appropriate change has been made in the regulatory language.

Section 778.14(b).

Section 778.14(b) requires a brief explanation of the facts involved in each suspension, revocation, or forfeiture listed under paragraph (a) as well as certain identifying information.

A commenter suggested that the requirement to provide the date and amount of a performance bond or similar security be deleted from § 778.14(b)(1), arguing that the

information was unnecessary and had no bearing on the permitting process.

OSM believes that the date and amount of the bond or similar security are important to ensure that the regulatory authority has a complete understanding of the background of each suspension, revocation, or forfeiture. This information would be relevant when making determinations, under Section 510(c) of the Act, that a permit should not be issued because the applicant has a demonstrated pattern of willful noncompliance with the Act which resulted in substantial and irreparable environmental harm. The date and the amount of bond will help the regulatory authority to establish the significance of such a pattern. OSM rejects the commenter's suggestion.

Section 778.14(c).

Section 778.14(c) provides for the submission of certain information so that the regulatory authority can have a full and complete understanding of the current status of the applicant's and related person's outstanding violations prior to reaching the determinations required by section 512(c) of the Act. OSM has modified the proposal by also requiring a listing of notices of violation received by any subsidiary, affiliate, or person controlled by or under common control with the applicant in order to prevent applicants from avoiding the reporting requirements by the use of reorganizations. In addition, this change will aid the regulatory authority in making the determinations regarding violation notices required by section 510(c) of the Act. Other changes in the regulatory language have been made for purposes of clarity or consistency.

Two commenters requested that an applicant's complete notice of violation (NOV) history not be included in every copy of the permit application submitted. The commenters thought that for companies operating numerous mines in many States, the NOV history could be voluminous. Also, they believed that this information would be unnecessary in the review copies that were sent to other agencies which did not have regulatory enforcement powers.

OSM rejects this suggestion primarily because it is important that all application copies being sent to the regulatory authority be identical to aid in the review of their completeness. Also, it is important that the public review copies be complete. OSM recognizes the concern of the commenters about voluminous submissions by large companies operating in more than one State. However, since only the NOV history for the 3-year period preceeding the application date is required, OSM does not think that this will be overly burdensome for the majority of applicants.

A commenter suggested, without further elaboration, that the violation notices listed should be limited to those issued within the State where the application was being filed. This comment is rejected because section 510(c) of the Act does not so limit the violation reporting requirement. This information will assist the regulatory authorities to detect patterns of willful violation.

One commenter suggested that § 778.14(c) require an applicant to list the enforcement actions taken for each violation notice listed.

The final rule meets the requirements of section 510(c) of the Act by providing the regulatory authority with sufficient information to determine whether a pattern of willful violations exists or whether the applicant or related entities have current unabated, uncontested violations. Regulatory authorities may require additional information on the enforcement action taken with respect to each listed violation if they believe such is necessary.

Section 778.15 Right-of-entry information.

Section 778.15 implements sections 507(b)(9) and 510(b)(6) of the Act. It requires the application to contain a description of the documents upon which the applicant bases its legal right to enter and begin mining operations in the permit area and a statement of whether that right is the subject of pending litigation. Based upon comments received, some changes in wording of proposed § 778.15(a) were made.

A commenter suggested that the language in proposed § 778.15(a) should be changed to make it clear that right-of-entry information must be submitted "upon which the applicant bases his legal right" not that which "supports" the right to enter and mine.

OSM agrees and has changed the first sentence of final § 778.15(a) to reflect more correctly the intent of section 507(b)(9) of the Act.

One commenter pointed out that proposed § 778.15(a) repeated the requirement that the applicant must state whether the right of entry is subject to litigation. OSM has removed the duplicative language. The final rule is similar to previous § 778.15 except that it now applies to both surface and underground operations. Final § 778.15(b) provides the information necessary to make the finding required by section 510(b)(6) of the Act regarding the right to extract coal by surface mining methods. Final § 778.15(c) implements the proviso in section 510(b)(6) that the Act does not authorize the adjudication of property rights disputes.

Section 778.16 Status of unsuitability claims.

Section 510(b)(4) of the Act and § 773.15(c)(3) require the regulatory authority to make a finding prior to the issuance of a permit that the proposed permit area is not within an area designated unsuitable for surface coal mining under Section 522 of the Act. In addition, section 510(b)(4) precludes the issuance of a permit where an area is under study for unsuitability designation in an administrative proceeding pursuant to section 522 (a)(4)(D) and (c) of the Act. Section 778.16 requires the application to contain information about unsuitability determinations and related pending proceedings to aid the regulatory authority in deciding whether the applicant is entitled to an exemption from the unsuitability requirements.

A commenter suggested adding language to § 778.16(c) to recognize property rights in existence prior to passage of the Act. The commenter also wanted to include a new subparagraph which would exclude noncoal mining operations from the requirements of the unsuitability provision.

These recommendations have been rejected. Under § 778.16(b) the regulatory authority will have adequate information upon which to determine whether an applicant is entitled to an unsuitability exemption. Noncoal mining operations are already excluded from the coverage of § 778.16 because sections 510(b)(4) and 522 of the Act and these rules apply only to surface coal mining operations.

With minor changes the final rule contains the same requirements as previous § 778.16 except that it applies to both surface and underground operations.

Section 778.17 Permit term.

Section 778.17(a) requires each application to identify the area to be mined during each phase of the proposed mining operation over the life of the mine. The provision implements the requirements of section 507(b)(8) of the Act and was included in previous §§ 778.17(a) and 782.17(a), but was inadvertently omitted from the proposal. The final rule includes this provision from the previous rule with some editorial revisions, to be in accord with the terminology used in these final rules

and to refer to both surface and underground operations. No substantive changes are intended.

One commenter pointed out that the preamble to proposed § 778.17 stated that the requirements of former § 778.17(a) had been retained. However, the proposed rule in fact deleted the provision. The commenter suggested that the language be reinstated.

OSM agrees that the preamble to proposed § 778.17(a) was incorrect since previous § 778.17(a) was not proposed to be retained. The final rule corrects this error.

Section 506(b) of the Act allows a regulatory authority to issue a permit for a term beyond five years based upon a demonstration that the applicant meets certain criteria. These criteria are set forth in § 778.17(b) and were contained in previous § 786.25.

A commenter supported OSM's decision limiting the permit term extension to the "initial" term. The commenter thought that the equities for extending the initial permit term would not justify a longer renewal term once the operation had begun.

Section 778.18 Insurance.

Section 778.18 requires the permit application to contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 and section 507(f) of the Act. No comments were received on this section. OSM has adopted the rule as proposed which is similar to previous § 778.18 except that it now applies to underground mining operations as well as surface mining operations.

Previous § 778.19 Identification of other licenses and permits.

A commenter disagreed with the proposed omission of previous § 778.19, which provided for the identification of other licenses and permits. The commenter thought that such information was not readily available to the regulatory authority and that the permittee was in a better position to provide it.

While OSM appreciates the commenter's concern, nevertheless it has determined that this information is not specifically required by the permitting sections of the Act. Rather, under section 503(a)(6) of the Act, regulatory authorities must establish a procedure for coordinating the review and issuance of permits with any other Federal or State permit process which is applicable to the proposed surface mining and reclamation operation. See 30 CFR 731.14(g)(9). The regulatory authorities can use this mechanism to obtain information on other licenses and permits. Moreover, the regulatory authority has the flexibility to set more stringent reporting requirements if necessary. See Section 505(b) of the Act, 30 U.S.C. 1255(b).

Therefore, OSM has omitted previous § 778.19.

Previous § 778.20 Identification of location of public office for filing of application.

No comments were received on the proposed omission of previous § 778.20 from the final rules. OSM has omitted the provision.

Section 778.21 Proof of publication.

Section 778.21 requires that a copy of the newspaper advertisement or other proof of publication, which is satisfactory to the regulatory authority and which supplies notice of the filing of the application for a permit, a significant revision of a permit, or a renewal of a permit shall be filed with the regulatory authority not later than 4 weeks after the last date of publication. OSM has modified the proposed rule slightly in response to a comment requesting that the proof of publication of the newspaper advertisement be acceptable to the regulatory authority. This change will allow the regulatory authority to set standards or criteria for proof of newspaper publication. In a related vein, OSM has changed the final rule by adding language to provide for proof of publication for other categories of application which also require public review.

Section 778.22 Facilities or structures used in common.

OSM adopted § 778.22 which makes it clear that facilities or structures may be shared by two separate permitted operations: (1) If they are bonded by each permittee; or (2) if agreement is reached and documented as to the respective responsibilities of the parties for the shared facilities or structures.

One commenter supported the proposed new section. A second suggested changing the proposed language so that it would be clear that the permittees must bond the shared facility unless otherwise agreed to by the permittees sharing the facility. A third commenter recommended that the plans for any facility or structure that would be used in common should be included in each permittee's application with the permittees' bonding the facility as if wholly owned and operated. This commenter also suggested that the regulatory authority should view the design and capabilities of such facility in light of the additional "load" upon it.

OSM has adopted the recommendation of the second commenter and has made appropriate modifications to the rule. Each permittee must bond the facility unless otherwise agreed to by the permittees sharing the facility. The agreement must be included in the application and must demonstrate that the full responsibility for the facility or structure will be met. OSM disagrees with the opinion of the third commenter that the plans for the facilities must be included in each application. OSM believes that referencing the plans included in one application by such other application(s) should be adequate. OSM also assumes that the reviewing agency will take into account any additional load upon the design and capability of facilities which may result from shared use.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in Parts 773, 774, 777, and 778 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and codified under new §§ 773.10, 774.10, 777.10, and 778.10. The information required by these parts will be used by the regulatory authority to evaluate applications for permits, revisions, renewals, or transfers, sales or assignments of permit rights for surface and underground mining activities to ensure that they will be conducted in a manner which meets the goals of the Act.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

One commenter disagreed with the determination that the regulations would not have a significant economic impact on a substantial number of small entities. He believed that the impact would be significant on all entities. He viewed the rules as requiring the operator to perform unnecessary and unrealistic studies without benefit, resulting in a monumental waste in money and effort.

OSM disagrees with the commenter's claims and believes that all of the permitting requirements of these regulations are necessary to carry out the purposes and provisions of the Act.

(See 30 U.S.C. 1211(c)(2)). The commenter did not identify those regulations that require "unnecessary and unrealistic studies," or that "waste money and effort." Additionally, the changes from the previous rule will not have such effects. Thus, OSM reiterates its findings under the Regulatory Flexibility Act.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the "Federal Environmental Impact Statement OSM EIS–1: Supplement" (FEIS) according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(c)). The FEIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, DC. 20240. This preamble serves as the record of decision under NEPA. The final rule is different from the draft final rules published in Volume III of the FEIS in that some paragraphs have been reorganized and additional clarifying language has been added which does not change the findings of the FEIS analysis.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 770

Coal mining, Surface mining, Underground mining.

30 CFR Parts 771, 774, 777, 778, 786, 787, and 788

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

30 CFR Part 773

Administrative practice and procedure, Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 775

Administrative practice and procedure, Coal mining, Surface mining, Underground mining.

30 CFR Part 782

Coal mining, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 770, 771, 773, 774, 775, 777, 778, 782, 786, 787, and 788 are amended, as set forth herein.

Dated: September 20, 1983.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. Section 701.5 is amended by revising the definition of the term "applicant" and adding the following definitions in alphabetical order:

§ 701.5 Definitions.

* * * * *

Administratively complete application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

* * * * *

Applicant means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

Application means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

* * * * *

Complete and accurate application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

* * * * *

Irreparable damage to the environment means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

* * * * *

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

* * * * *

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

* * * * *

Transfer, assignment, or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.

* * * * *

Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

* * * * *

Willful violation means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, this chapter, or the applicable program, committed by a person who intends the result which actually occurs.

§ 701.11 [Amended]

2. Section 701.11(d)(1) is amended by replacing the references to "30 CFR 786.21" with references to "§ 773.15(c)(6) of this chapter."

3. Section 701.11(d)(2) is revised to read as follows:

§ 701.11 Applicability.

* * * * *

(d)* * *

(2) The exemptions provided in Paragraphs (d)(1)(i) and (d)(1)(ii) of this section shall not apply to—

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

* * * * *

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

PARTS 770 AND 771—[REMOVED]

4. Parts 770 and 771 are removed.

5. Part 773 is added to read as follows:

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Sec.

773.1 Scope and purpose.
773.10 Information collection.
773.11 Requirements to obtain permits.
773.12 Regulatory coordination with requirements under other laws.
773.13 Public participation in permit processing.

Sec.

773.15 Review of permit applications.
773.17 Permit conditions.
773.19 Permit issuance and right of renewal.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

§ 773.1 Scope and purpose.

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

§ 773.10 Information collection.

The information collection requirements contained in Part 773 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the permit applications. The obligation to respond is mandatory.

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit issued by the regulatory authority, except as provided for in paragraph (b) of this section.

(b) *Continuation of initial program operations.* (1) If a State program receives final disapproval under Part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of Subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) A person authorized to conduct surface coal mining and reclamation operations under the initial regulatory program, or under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, Subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) *Continued operations under Federal program permits.* (1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regulatory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

(d) *Continued operations under State program permits.* (1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirments of this Act, the Director shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

§ 773.12 Regulatory coordination with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended, (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); Executive Order 11593; and for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*).

§ 773.13 Public participation in permit processing.

(a) *Filing and public notice.* (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed

permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 761.12(d) of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under § 785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under § 774.13, or renewal of a permit under § 774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under § 774.13, or a renewal of a permit under § 774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to—

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or § 773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) *Comments and objections on permit applications.* (1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.

(3) The regulatory authority shall upon receipt of such written comments or objections—

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) *Informal conferences.* (1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15. The request shall—

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conference held in accordances with this section may be used by the regulatory authority as the public hearing required under § 761.12(d) of this chapter on proposed relocation or closing of public roads.

(d) *Pubic availability of permit applications.* (1) *General availability.* Except as provided in paragraphs (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) *Limited availability.* Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) *Confidentiality.* The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to—

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

§ 773.15 Review of permit applications.

(a) *General.* (1) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(b) *Review of violations.* (1) The regulatory authority shall make a finding that any surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the regulatory authority shall require the applicant, before the issuance of the permit, to either—

(i) Submit to the regulatory authority proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the regulatory authority that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 775.13 either denies a stay applied for in the appeal or affirms the violation, then the applicant shall promptly submit the proof required under paragraph (b)(1)(i) of this section.

(2) The regulatory authority may issue a permit conditionally pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section.

(3) If the regulatory authority makes a finding that the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application shall not be granted. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 775.11.

(c) *Written findings for permit application approval.* No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

(2) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is—

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Parts 764 and 769 of this chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 762, 764, and 769 of this chapter or subject to the prohibitions or limitations of §§ 761.11 and 761.12 of this chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(5) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of Subchapter B or K of this chapter.

(7) The applicant has paid all reclamation fees from previous and existing operations as required by Subchapter R of this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural

postmining land use, in accordance with the requirements of § 816.111(d) or 817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(11) Surface coal mining and reclamation operations will not adversely affect a private family burial ground. Adversely affecting a private family burial ground shall not include relocation authorized by applicable State law or regulations.

(d) *Performance bond submittal.* If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this chapter.

§ 773.17 Permit conditions.

Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to—

(1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Parts 840 and 842, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition or the permit, including, but not limited to—

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(f) As applicable, the permittee shall comply with § 701.11(d) and Subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

§ 773.19 Permit issuance and right of renewal.

(a) *Decision.* If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with Subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) *Notification.* The regulatory authority shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(3) If the regulatory authority is a State agency, the local OSM office.

(c) *Permit term.* Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of § 778.17 of this chapter are met.

(d) *Right of renewal.* Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with § 774.15.

(e) *Initiation of operations.* (1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if—

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

6. Part 774 is added to read as follows:

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Sec.

774.1 Scope and purpose.
774.10 Information collection.
774.11 Regulatory authority review of permits.
774.13 Permit revisions.
774.15 Permit renewals.
774.17 Transfer, assignment, or sale of permit rights.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; and transfer, assignment, or sale of permit rights.

§ 774.10 Information collection.

The information collection requirements contained in Part 774 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the applications for permit action. The obligation to respond is mandatory.

§ 774.11 Regulatory authority review of permits.

(a) The regulatory authority shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:

(1) Permits with a term longer than 5 years shall be reviewed no less frequently than the permit midterm or every 5 years, whichever is more frequent.

(2) Permits with variances granted in accordance with § 785.14 of this chapter (mountaintop removal) and § 785.18 of this chapter (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) of this chapter shall be reviewed no later than 3 years from the date of issuance of the permit unless, for variances issued in accordance with § 785.14 of this chapter, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

(3) Permits containing experimental practices issued in accordance with §785.13 of this chapter and permits with a variance from approximate original contour requirements in accordance with § 785.16 shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with §§ 785.13(g) and 785.16(c) of this chapter, respectively.

(b) After the review required by Paragraph (a) of this section, or at any time, the regulatory authority may, by order, require reasonable revision of a permit in accordance with § 774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the regulatory authority requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in Part 775 of this chapter. Copies of the order shall be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with Subchapter L of this chapter.

§ 774.13 Permit revisions.

(a) *General.* During the term of a permit, the permittee may submit an application to the regulatory authority for a revision of the permit.

(b) *Application requirements and procedures.* the regulatory authority shall establish—

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this subchapter, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21, shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) *Criteria for approval.* No application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) *Request to change permit boundary.* Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

§ 774.15 Permit renewals.

(a) *General.* A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) *Application requirements and procedures.* (1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum—

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self-insurance under § 800.60 of this chapter will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to Subchapter J of this chapter;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by § 778.21 of this chapter; and

(v) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in §§ 773.13 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of § 774.13

(c) *Approval process.* (1) *Criteria for approval.* The regulatory authority shall approve a complete and accurate application for permit renewal, unless it finds, in writing that—

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

(iii) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

(iv) The operator has not provided evidence of having liability insurance or self-insurance as required in § 800.60 of this chapter;

(v) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to Subchapter J of this chapter; or

(vi) Additional revised or updated information required by the regulatory authority has not been provided by the applicant.

(2) *Burden of proof.* In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(3) *Alluvial valley floor variance.* If the surface coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter, because the permittee complied with the exceptions in the proviso to section 510(b)(5) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter.

(d) *Renewal term.* Any permit renewal shall be for a term not to exceed the period of the original permit established under § 773.19.

(e) *Notice of decision.* The regulatory authority shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.

(f) *Administrative and judicial review.* Any person having an interest which is or may be adversely affected by the decision of the regulatory authority shall have the right to administrative and judicial review set forth in Part 775 of this chapter.

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *General.* No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority.

(b) *Application requirements.* An applicant for approval of the transfer, assignment, or sale of permit rights shall—

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including—

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by Part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under Subchapter J of this chapter.

(c) *Public participation.* Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) *Criteria for approval.* The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor—

(1) Is eligible to receive a permit in accordance with § 773.15 (b) and (c) of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by Subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) *Notification.* (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) *Continued operation under existing permit.* The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

7. Part 775 is added to read as follows:

PART 775—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Sec.

775.1 Scope and purpose.
775.11 Administrative review.
775.13 Judicial review.

Authority: Pub. L. 30 U.S.C. 1201 *et seq.*

§ 775.1 Scope and purpose.

This part provides requirements for administrative and judicial review of decisions on permits.

§ 775.11 Administrative review.

(a) *General.* Within 30 days after an applicant or permittee is notified of the decision of the regulatory authority concerning an application for approval of exploration required under Part 772 of this chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this section.

(b) *Administrative hearings under State programs.* (1) The regulatory authority shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under § 773.13(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.

(2) The regulatory authority may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if—

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority except that continuation under an existing permit may be allowed where the operation has a valid permit issued under Section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) *Administrative hearings under Federal programs and Federal lands programs.* All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to Part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by 5 U.S.C. 554 and 43 CFR Part 4.

§ 775.13 Judicial review.

(a) *General.* Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in paragraph (b) or (c) of this section if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to § 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under § 775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) *Judicial review under State programs.* The action of the hearing authority identified in Paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Act.

(c) *Judicial review under Federal programs and Federal lands programs.* The action of the hearing authority identified in Paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Act

8. Part 777 is added to read as follows:

PART 777—GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

Sec.

777.1 Scope.
777.10 Information collection.
777.11 Format and contents.
777.13 Reporting of technical data.
777.14 Maps and plans: General requirements.
777.15 Completeness.
777.17 Permit fees.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

§ 777.1 Scope.

This part provides minimum requirements concerning the general content for permit applications under a State or Federal program.

§ 777.10 Information collection.

The information collection requirements contained in Part 777 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0032. The information is being collected to meet the requirements of section 507, 508, and 510(b) of the Act. It provides general requirements for permit application format and contents. The obligation to respond is mandatory.

§ 777.11 Format and contents.

(a) An application shall—

(1) Contain current information, as required by this subchapter;

(2) Be clear and concise; and

(3) Be filed in the format required by the regulatory authority.

(b) If used in the application, referenced materials shall either be provided to the regulatory authority by the applicant or be readily available to the regulatory authority. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

§ 777.13 Reporting of technical data.

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

§ 777.14 Maps and plans: General requirements.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations. At a minimum, distinctions shall be clearly shown among those portions of the life of operations in which surface coal mining operations occurred—

(1) Prior to August 3, 1977;

(2) After August 3, 1977, and prior to either—

(i) May 3, 1978; or

(ii) In the case of an applicant or operator which obtained a small operator's exemption in accordance with § 710.12 of this chapter, January 1, 1979;

(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program;

(4) After the estimated date of issuance of a permit by the regulatory authority under the approved regulatory program.

§ 777.15 Completeness.

An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum—

(a) For surface mining activities, the information required under Parts 778, 779, and 780 of this chapter, and, as applicable to the operation, Part 785 of this chapter; and

(b) For underground mining activities, the information required under Parts 778, 783, and 784 of this chapter, and, as applicable to the operation, Part 785 of this chapter.

§ 777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be

accompanied by a fee determined by the regulatory authority. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

9. Part 778 is revised to read as follows:

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Sec.

778.1 Scope and purpose.
778.10 Information collection.
778.13 Identification of interests.
778.14 Violation information.
778.15 Right-of-entry information.
778.16 Status of unsuitability claims.
778.17 Permit term.
778.18 Insurance.
778.21 Proof of publication
778.22 Facilities or structures used in common.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

§ 778.1 Scope and purpose.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

§ 778.10 Information collection.

The information collection requirements contained in Part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029-0034 and 1029-0037. The information is being collected to meet the requirements of sections 507(b), 508(a) and 510(c) of the Act, which require that persons conducting surface mining activities submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by the activities, compliance status, and history. This information will be used by the regulatory authority to ensure that all legal, financial, and compliance requirements are satisfied prior to making a decision to issue or deny a permit under the permanent regulatory program. The obligation to respond is mandatory.

§ 778.13 Identification of interests.

An application shall contain the following:

(a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(b) Names, addresses, and telephone numbers of the applicant, the operator (if different from the applicant), and the applicant's resident agent who will accept service of process.

(c) For applicants other than single proprietorships, where applicable—

(1) Name and address of each officer, partner, principal, principal shareholder, and director or other person performing a function similar to a director.

(2) All names under which the applicant, partner, or principal shareholder operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of application.

(d) A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in Paragraph (c)(2) of this section. Such statement shall provide permit or application numbers or other identifiers and the identity of the regulatory authority for each operation listed.

(e) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(f) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(g) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(h) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to State law shall be held in confidence by the regulatory authority, as provided under § 773.13(d)(3)(ii) of this chapter.

§ 778.14 Violation information.

An application shall contain the following:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has—

(1) Had a Federal or State coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in Paragraphs (a) (1) and (2) of this section has occurred, including—

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) A list of all violation notices received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with any surface coal mining and reclamation operation during the 3-year period preceding the application date, for violations of any provision of the Act; or of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. The application shall also contain the following information about each violation notice:

(1) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in Paragraph (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

§ 778.15 Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit—

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

§ 778.16 Status of unsuitability claims.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under Parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in § 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of § 761.12 of this chapter.

§ 778.17 Permit term.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall—

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

§ 778.18 Insurance.

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 of this chapter.

§ 778.21 Proof of publication.

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by § 773.13(a)(1) of this chapter.

§778.22 Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

PART 782—[REMOVED]

10. Part 782 is removed.

PARTS 786, 787, AND 788—[REMOVED]

11. Parts 786, 787, and 788 are removed.

[Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*]

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Wednesday
September 28, 1983

Part IV

Department of Transportation

Federal Railroad Administration

Washington Union Station; Criteria and Procedures for Selecting a Developer

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Criteria and Procedures for Selecting a Developer for Washington Union Station

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice.

SUMMARY: This document provides notice of the criteria and procedures the Secretary will use to select a developer for Washington Union Station. Establishment of these criteria and procedures is required by law.

EFFECTIVE DATE: This notice is effective on September 28, 1983.

FOR FURTHER INFORMATION CONTACT: S. Mark Lindsey, Assistant Chief Counsel for Commerce and Legal Services, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202-426-7710.

SUPPLEMENTARY INFORMATION:

Background

The Union Station Redevelopment Act of 1981 (Pub. L. 97-125) authorizes transfer of the lease on Union Station from the Secretary of the Interior to the Secretary of Transportation (Secretary) in order for the Secretary to rehabilitate and redevelop Union Station as a multi-use transportation terminal and commercial complex in accordance with the following goals:

(a) Preservation of the exterior facade and other historically and architecturally significant features of the Union Station building;

(b) Restoration and operation of a portion of the historic Union Station building as a rail passenger station, * * *;

(c) Commercial development of the Union Station complex that will, to the extent possible, support the continued operation and maintenance of such complex; and

(d) Withdrawal by the Federal Government from any active role in the management of the Union Station complex as soon as practicable and at the least possible Federal expense consistent with the goals set forth in subsections (a) through (c) of this section.

The Redevelopment Act required the Secretary of Transportation to conduct an engineering survey of Washington Union Station: (a) To determine the actions needed to rehabilitate the building and restore the rail passenger station to Union Station, and (b) to prepare detailed estimates of the cost of rehabilitating the building and restoring the rail passenger station to the building. The Redevelopment Act also required the Secretary to perform a market study to assess the commercial development potential of Union Station. Both studies were completed and submitted to Congress on December 29, 1982.

The engineering survey, performed for the Secretary by Ewing Cole Cherry Parsky, confirmed that Union Station can be rehabilitated and renovated to be suitable for the type of mixed-use commercial and transportation development contemplated by the statute. The market study, performed for the Secretary by Gladstone Associates, concluded that Union Station can be successfully redeveloped in accordance with the statutory goals to contain the Amtrak station, 100,000 square feet of retail space, and 80,000 square feet of office space. Thus, the initial Union Station project would include the historic building and concourse, along with the parking garage for 1300 vehicles, as noted below.

The National Railroad Passenger Corporation, or Amtrak, has committed up to $70 million of its funds to redevelopment of Union Station to insure that the building is structurally and mechanically sound, that its historically and architecturally significant features are preserved, and that suitable facilities are available for rail passengers. Separately, the District of Columbia is spending up to $40 million of its Interstate Highway funding allocation to complete the parking garage at Union Station. With those commitments in place, the Secretary is proceeding to redevelop Union Station.

The Secretary is implementing the Union Station Redevelopment Project through the Union Station Redevelopment Corporation, a non-profit corporation established for this purpose. The Secretary, acting through FRA, and Amtrak have entered into a cooperative agreement with the Union Station Redevelopment Corporation to manage the redevelopment project.

Selection of a private developer for the project is a key step. This document provides notice of the procedures and criteria to be used in making that selection.

Criteria and Procedures for Selecting a Developer for Washington Union Station

The Union Station Redevelopment Act of 1981 (Pub. L. 97-125) (40 U.S.C. 815(b)) requires the Secretary of Transportation (the "Secretary") to prescribe the procedures and criteria for selection of a developer for Union Station. This document provides public notice of those procedures and criteria.

Procedures for Developer Selection

The Secretary, acting through the Federal Railroad Administration, and Amtrak have entered into a cooperative agreement with the Union Station Redevelopment Corporation (USRC) to manage the redevelopment of Washington Union Station. Prior to October 31, 1983, USRC will issue a request for qualifications that will invite developers to submit statements of their qualifications. The request for qualifications will provide detailed information about the project and will contain detailed guidance concerning the information to be submitted to USRC. We presently contemplate that developers will be given thirty days to respond to the request for qualifications. Developers interested in receiving a request for qualifications should write to USRC, c/o Gladstone Associates, One Thomas Circle, Washington, DC 20005. In addition, notice of the availability of the request for qualifications will be published in *Commerce Business Daily* and major newspapers.

USRC will evaluate brief, written statements of qualifications received from developers in accordance with the selection criteria set forth in this notice, which criteria will also be contained in the request for qualifications. Based on that evaluation, USRC will prepare a list of developers to be eligible for further competition and will submit that list to the Secretary for the Secretary's approval.

Upon the Secretary's approval of USRC's list of eligible developers, USRC will send a prospectus to each eligible developer. The prospectus will invite those developers to submit detailed proposals for redeveloping Union Station. A substantial deposit will be required with submission of a proposal. If less than two detailed proposals conforming to the selection criteria and responsive to the prospectus are submitted, the competition will continue and, in the Secretary's discretion, may be broadened to include developers not previously listed as eligible developers.

USRC will review and evaluate all proposals submitted in response to the prospectus. In the course of that evaluation, USRC will conduct such interviews of the responding developers and their team members and such inspections of other projects as USRC believes appropriate to its evaluation task. USRC's evaluation will also include an appropriate review of the development and financial reference of developers. Upon completion of its evaluation, USRC will rank the development proposals received and submit that ranking, together with USRC'S recommendation of a Preferred Developer, to the Secretary.

Following such review as the Secretary deems appropriate of USRC's

evaluation of the development proposals, its ranking of those proposals, and its recommendation of a Preferred Developer, the Secretary will select a Preferred Developer. The Secretary will then enter into an appropriate agreement with that developer conferring an exclusive right to negotiate for a mutually agreed-upon period, which period may be extended at the discretion of the Secretary. The Preferred Developer will be required to make an additional substantial deposit. The Secretary reserves the right at every stage in the selection procedure, however, to reject all proposals and reopen the developer selection process.

During the term of the Preferred Developer's exclusive right to negotiate, the Preferred Developer will develop and submit to USRC detailed schematic plans for Union Station, secure financing for the project, and obtain all necessary public approvals. The Preferred Developer and the Secretary will also negotiate the terms and conditions of a development agreement during this period. Final selection will be made by signing a development agreement with the developer.

If the Preferred Developer's exclusive right to negotiate expires without a development agreement having been signed, or if the Secretary terminates the Preferred Developer's exclusive right to negotiate for cause (*e.g.*, inability to agree on terms of a development agreement, such as the development schedule, the terms of financing , rent, or detailed schematic plans), the Secretary may terminate the Preferred Developer's exclusive right to negotiate by so notifying the Preferred Developer in writing. In the Secretary's discretion, the Secretary may then select another Preferred Developer from among those ranked by USRC and seek to negotiate a development agreement with that developer, or may reopen the developer selection process.

Selection Criteria

Qualifications. Developers responding to the request for qualifications will submit a statement of developer qualifications and a statement of development team qualifications. This submission must demonstrate substantial development experience and capacity and substantial financial resources. Developers will be required to demonstrate their ability to plan, design, finance, construct, market, and manage mixed-use real estate developments involving retail, office, transportation, and other compatible uses in historic structures on the scale required at Union Station. Prior experience with public-private ventures as contemplated for Union Station is preferable. The request for qualifications will elaborate on these and other specific requirements for qualification.

Evaluation Criteria

Development proposals submitted by eligible developers in response to the prospectus will be evaluated in accordance with the following criteria:

(a) Compatibility of the proposed development with the utilization of the Union Station building as a rail passenger station for Amtrak;

(b) Compatibility of the proposed development with, and preservation of, historically and architecturally significant features of the Union Station building;

(c) Ability of the proposed commercial development to support and finance continued operation and maintenance of Union Station for the foreseeable future;

(d) The financial commitment and capacity of the developer and other investors to carry out a major mixed-use commercial and transportation development as contemplated by the Redevelopment Act and as the developer proposes;

(e) The business deal proposed, including the financial return provided to USRC from the development;

(f) The extent to which the proposed development will enhance pedestrian and vehicular circulation, the design and treatment of public spaces, and the relationship of development of this site to that on adjacent and nearby sites;

(g) The developer's commitment to equal opportunity employment and the developer's commitment to ensure that small and minority business enterprises (as defined in 49 CFR Part 23) shall have the maximum opportunity to compete for and perform contracts;

(h) The developer's ability to adhere to an agreed upon schedule implementing improvements to the Union Station complex;

(i) The quality of materials and workmanship;

(j) Ability and experience in marketing and managing mixed-use real estate development involving retail, office transporation, and other compatible uses in historic structures on the scale required at Union Station;

(k) The extent to which the proposed development will draw upon the local pedestrian market and on the market that can reach the site via mass transit; and

(l) Responsiveness to the prospectus.

The prospectus will include more detailed and specific statements of the evaluation criteria.

Authority: Sec. 115 of the National Visitor Center Facilities Act of 1968 (40 U.S.C. 815), as amended by Sec. 3 of the Union Station Redevelopment Act of 1981, Pub. L. 97-125, 95 Stat. 1667, 1668; and 49 CFR 1.49(k).

Issued at Washington, D.C. on September 22, 1983.

Thomas A. Till,

Deputy Administrator.

[FR Doc. 83-26370 Filed 9-27-83; 8:45 am]

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Wednesday
September 28, 1983

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Interstate Land Sales; Proposed Registration Rules and Exemption Guidelines

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 1700, 1710, and 1730

[Docket No. R-83-1041]

Amendments Relating to Interstate Land Sales Registration

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations implementing the Interstate Land Sales Full Disclosure Act to reduce the volume of the present regulations and remove a number of exemption and registration requirements for developers in the land sales industry. These proposed changes are part of an overall plan to eliminate unnecessary documentation and duplication and to relieve the industry of regulatory burdens to the extent practicable while preserving beneficial protections for consumers.

DATE: Comments must be received by November 28, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

A Notice of Guidelines (Interpretive Rule) is being published concurrently with this proposed rule and interested parties are invited to comment on those proposals as well. Comments are invited as to whether anything included in the Guidelines should be included in this rule and whether anything in this rule should be included in the Guidelines.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Director, Program Development and Control Division, Department of Housing and Urban Development, Room 4106, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6314. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This proposed rule would eliminate duplicative language to reduce the volume of the regulations governing interstate land sales registration and provide certain deregulatory changes, as described below.

The Delegations of Authority, Revision and Update, as published in the **Federal Register** on Wednesday, July 14, 1982 (47 FR 30653), stated that the sections in Subparts A and B of 24 CFR Part 1700 dealing with Delegations of Authority in the Interstate Land Sales program would be withdrawn. This proposed rule would eliminate those sections.

Section 1710.5 of the regulations exempts from the requirements of the Interstate Land Sales Full Dislosure Act the sale or lease of any improved land on which there is a residential, commercial, condominium or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building on the land within a period of two years. The proposed rule would modify this two-year provision in the case of the construction of condominiums, to permit a clause that conditions the sale on a certain percentage of sales of other units for a period not to exceed 180 days from the date the first purchaser signs the sales contract on the project or if a phased project, from the date the first purchaser signs the first contract in each phase. However, any such clause cannot extend the overall two-year obligation to construct. This modification is proposed to permit developers to test the viability of a project before being obligated to construct.

One of the requirements in § 1710.10 for obtaining the single family residence exemption from the registration requirements of the Act is that the lot be situated on an asphalt or concrete street or highway. The proposed rule would expand the types of streets or highways permitted to include those paved with any bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated. This change recognizes the fact that in many jurisdictions, road surfaces are finished with acceptable hard surface materials other than asphalt and concrete. The change would make the single family residence exemption available to developers in appropriate instances for subdivisions located in those jurisdictions.

Sections 1710.12, Intrastate exemption, and § 1710.13, SMSA exemption, are proposed to be amended to include a requirement that developers must turn over control of a developer-controlled Property Owners' Association or Architectural Control Committee to the lot owners when the developer no longer owns a majority of the lots in the subdivision. The Department's policy has been to accept a provision for transfer of control when the developer's ownership of lots was reduced to 30 percent. This change is proposed to allow the developer more control of the subdivision during the developmental period.

The sample Intrastate Exemption Statement and the SMSA Exemption Statement, found respectively at §§ 1710.12 and 1710.13, would be removed to reduce volume. Sample statements would be provided by OILSR upon request. Also, sample statements would be included in the Notice of Guidelines (Interpretive Rule) which is being published concurrently with this rule. Removal of the Sample Statements from the regulations does not signal a change in the substantive requirements of the Act or regulaitons.

Sections 1710.10(c)(6), 1710.12(a)(4)(i)(A), 1710.13(a)(6)(i)(A), and 1710.16(b)(2)(iv) would be revised to require that the contract of sale require delivery of a warranty deed, "which at the time of delivery" is free from liens and encumbrances. This revision would clarify that the title must be clear at the time the deed is delivered rather than afterwards—within 180 days—as some persons may infer from the current language. The deletion of the introductory phrase "From the date the purchaser signs the contract until the deed is delivered," is intended to achieve the same end—focus attention on the condition of title on the date of delivery of the deed.

In §§ 1710.12(a)(4)(v) and 1710.13(a)(6)(v), dealing with beneficial property restrictions that are uniformly applied to "every applicable lot", the words "or group of lots" would be added. This change would recognize that a subdivision may contain several sections with different beneficial property restrictions applicable to the group of lots in a section, rather than to all lots in the subdivision.

The word Standard would be dropped from the title of the Standard Metropolitan Statistical Area Exemption § 1710.13. This change is necessary to bring the regulation in line with Executive Order No. 12318.

Section 1710.15 would be removed. Those subdivisions exempt under that section as of June 20, 1980 would continue to be exempt under proposed § 1730.100(c).

In § 1710.112, Financial information, the requirement that the sales contract provide for delivery of deed within 120 days would be changed to 180 days. The purpose of this change is to make this provision consistent with the 180-day

provision which is used in the Act and elsewhere in regulations.

In § 1710.116(c), Violations and litigation, paragraphs (1) and (2) (concerning application of administrative sanctions and conviction of a crime) have been combined to shorten the section. The term "land investment" has been dropped from the types of activities for which a person may have been the subject of administrative sanctions or conviction, because "land sales" encompasses it. Similarly, the word "regulation" is dropped, since it is included in the term "law."

Under § 1710.208, General information, the requirement that a general plan of the subdivision be submitted would be simplified by eliminating most detailed specifications. In preparing a general plan, the developer would no longer be required to identify individual lots by lot numbers within the proposed sections or delineate a representative lot with dimensions. The developer is required to file a detailed plat map of each section at the time that the developer registers the offering with OILSR. The details omitted from the general plan under this proposed rule are provided in the plat map, which must be filed before sale of the lots.

Section 1710.209(c)(1) would be changed to accept a commitment to insure title satisfaction of the requirement to submit title evidence for the land being registered. This change would bring this rule into line with the normal practice of the industry.

The rule would also make a number of technical amendments designed to clarify the regulations in the industry.

The rule would also make a number of technical amendments designed to clarify the regulations and reduce their volume.

In this rulemaking proceeding, the Department is seeking to improve the efficiency of its land sales regulations, both with respect to substantive requirements and with respect to procedural requirements. Affected parties are invited to comment on problem areas not addressed by the proposed rule, as well as on the appropriateness of changes made in the proposed rule.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD Regulations in 24 CFR Part 50 that 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 during regular business hours in the Office of the Rules Docket Clerk, 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 the Executive Order on Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicate that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as item H–80–82 in the Department's Semiannual Agenda of Regulations published on April 25, 1983 (48 FR 18074), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. It would serve to relieve a part of the regulatory burden on real estate developers, some of whom constitute small entities, but its effect is not expected to exceed the threshold set forth in the Act.

The Catalog of Federal Domestic Assistance program number is 14.801.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2502–0243.

List of Subjects

24 CFR Part 1700

Authority delegations (Government agencies), Freedom of information, Organization and functions (Government agencies).

24 CFR Part 1710

Consumer protection, Land sales, Reporting and recordkeeping requirements.

24 CFR Part 1730

Consumer protection land sales.

Accordingly, the Department proposes to amend 24 CFR Parts 1700, 1710 and 1730 as follows:

PART 1700—INTRODUCTION

1. The Table of Contents to Part 1700 would be revised to read as follows:

PART 1700—INTRODUCTION

Sec.
1700.1 Scope of this Chapter.
1700.5 [Reserved]
1700.10 [Reserved]
1700.15 Establishment of Office.
1700.20 [Reserved]
1700.25 [Reserved]
1700.30 Public information.
1700.35 Separability of provisions.

2. The Authority section for Part 1700 would be revised to read as follows:

Authority: Section 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

3. Section 1700.1 would be revised to read as follows:

§ 1700.1 Scope of this Chapter.

A land developer is required by the Interstate Land Sales Full Disclosure Act (hereinafter referred to as the Act), Title XIV of Pub. L. 90–448, 82 Stat. 590, 15 U.S.C. 1701, to make full disclosure in the sale or lease of certain undeveloped, subdivided land. The Act makes it unlawful (except with respect to certain exempt transactions) for any developer to sell or lease, by use of the mail or the use of any means or instruments of transportation or communication in interstate commerce, any such land offered as part of a common promotional plan unless the land is registered with the Secretary of Housing and Urban Development and a printed property report is furnished to the purchaser or lessee in advance of the signing of an agreement for sale or lease.

(Approved by the Office of Management and Budget under OMB control number 2502–0243.)

§ 1700.5 [Reserved].

§ 1700.10 [Reserved].

§ 1700.20 [Reserved].

§ 1700.25 [Reserved].

4. Sections 1700.5, 1700.10, 1700.20 and 1700.25 would be removed and reserved.

5. Section 1700.30 would be amended by revising paragraph (c) to read as follows:

§ 1700.30 Public information.

* * * * *

(c) *Nonapplicability of exemptions authorized by 5 U.S.C. 552.* With the exception of information exempt from disclosure under 5 U.S.C. 552(b)(7) and 24 CFR 15.21(a)(7), all information

contained in or filed with any statement of record shall be made available to the public as provided by Section 1405(d) of the Act.

* * * * *

6. Section 1700.35 would be revised to read as follows:

§ 1700.35 Separability of provisions.

If any provision of these regulations is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect the remaining provisions of the regulations.

§ 1700.80 [Removed.]

§ 1700.85 [Removed.]

§ 1700.90 [Removed.]

§ 1700.91 [Removed.]

§ 1700.95 [Removed.]

§ 1700.100 [Removed.]

7. Sections 1700.80, 1700.85, 1700.90, 1700.91, 1700.95 and 1700.100 would be removed.

PART 1710—LAND REGISTRATION

8. The authority citation for Part 1710 would be revised to read as follows:

Authority: Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

9. Section 1710.3 would be amended by adding at the end, the following words:

(Approved by the Office of Management and Budget under OMB control number 2502-0243.)

10. Section 1710.5 would be amended by revising paragraph (b) to read as follows:

§ 1710.5 Statutory exemptions from the provisions of this chapter.

The requirements of the Act do not apply to—

* * * * *

(b) The sale or lease of any improved land on which there is a residential, commercial, condominium or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years. In the case of condominium construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and it is for a period not to exceed 180 days. However, the 180-day provision cannot extend the two-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

* * * * *

11. Section 1710.6 would be revised to read as follows:

§ 1710.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under § 1710.5. In the sale of lots in the subdivision that are not exempt under § 1710.5, the developer must comply with the Act's anti-fraud provisions, set forth in § 1710.4 (b) and (c).

12. Section 1710.7 would be amended by revising paragraph (d) to read as follows:

§ 1710.7 Twelve lot exemption.

* * * * *

(d) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

13. Section 1710.8 would be amended by revising paragraph (c) to read as follows:

§ 1710.8 Scattered site subdivisions.

* * * * *

(c) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

14. Section 1710.9 would be amended by revising paragraph (b) to read as follows:

§ 1710.9 Twenty acre lots.

* * * * *

(b) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

15. Section 1710.10 would be amended by revising paragraphs (c)(1), (3), and (6) and (d) to read as follows:

§ 1710.10 Single family residence exemption.

* * * * *

(c) *Lot requirements.* (1) The lot must be located within a municipality or county where a unit of local government or the State specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

(i) Lot dimensions.

(ii) Plat approval and recordation.

(iii) Roads and access.

(iv) Drainage.

(v) Flooding.

(vi) Water supply.

(vii) Sewage disposal.

* * * * *

(3) The lot must be situated on a paved street or highway which has been built to standards established by the State or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption, "paved" means concrete or pavement with a bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated.

* * * * *

(6) The contract of sale must require delivery, within 180 days after the signing of the sales contract, of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through, or under the seller.

* * * * *

(d) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

16. Section 1710.11(a)(5) would be removed and the following new paragraph (b) would be added, to read as follows:

§ 1710.11 Mobile home exemption.

(a) * * *

(b) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

17. Section 1710.12 would be amended by revising the introductory text of paragraph (a)(4), (a)(4)(i) (A), and (a)(4)(v) to read as follows:

§ 1710.12 Intrastate exemption.

(a) * * *

(4) The lost being sold is free and clear of all liens, encumbrances and adverse claims except the following:

(i) * * *

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

* * * * *

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. To be enforceable, restrictions must be part of a general plan of development. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenants or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

* * * * *

18. Section 1710.12 would be further amended by revising paragraph (b), by removing paragraph (c), and by redesignating paragraph (d) as paragraph (c) and revising it, so that paragraphs (b) and (c) would read as follows:

§ 1710.12 Intrastate exemption.

* * * * *

(b) *Intrastate Exemption Statement.* (1) To satisfy the requirements of paragraphs (a)(5) and (a)(6) of this section, an Intrastate Exemption Statement containing the information prescribed in each such paragraph shall be given to each purchaser. A State-approved disclosure document may be used to satisfy this requirement if all the information required by paragraphs (a)(5) and (a)(6) is included in this disclosure. A sample Intrastate Exemption Statement will be provided by OILSR upon request. In such a case, the developer must obtain a written receipt from the purchaser and comply with the other requirements of the exemption.

(2) To be acceptable for purposes of the exemption, the statement(s) given to purchasers must contain neither advertising or promotion on behalf of the developer or subdivision nor references to the U.S. Department of Housing and Urban Development.

(c) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

19. Section 1710.13 would be amended by removing paragraphs (d), (e), and (f), and by revising the caption of the section and paragraphs (a)(2), (a)(3), the introductory text of (a)(6), (a)(6)(i)(A), (a)(6)(v), (a)(7), (a)(9), (b) and (c), to read as follows:

§ 1710.13 Metropolitan Statistical Area (MSA) exemption.

(a) * * *

(2) The lot is located within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget and characterized in paragraph (b) of this section.

(3) The principal residence of the purchaser is within the same MSA as the subdivision.

* * * * *

(6) The lot being sold must be free and clear of liens such as mortgages, deeds of trust, tax liens, mechanics' liens, or judgments. For purposes of this exemption, the term "liens" does not include the following:

(i) * * *

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

* * * * *

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. To be enforceable, restrictions must be a part of a general plan of development. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenants, or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

* * * * *

(7) Before the sale the developer gives a written MSA Exemption Statement to the purchaser and obtains a written receipt acknowledging that the statement was received. A sample MSA Exemption Statement will be provided by OILSR upon request. A State-approved disclosure document may be used to satify this requirement if all of the information required by this section is included. The statement(s) given to purchasers must contain neither advertising or promotion on behalf of the developer or the subdivision nor references to the U.S. Department of Housing and Urban Development. In descriptive and concise terms, the statement that the developer must give the purchaser shall disclose the following:

(i) All liens, reservations, taxes, assessments, beneficial property restrictions which are enforceable by other lot owners in the subdivision, and adverse claims which are applicable to the lot to be purchased.

(ii) Good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years, or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement.

* * * * *

(9) The developer executes a written affirmation for each sale made under this exemption. By Janaury 31 of each year, the developer submits to the Secretary a copy of the executed affirmation for each sale made during the preceding calendar year or a master affirmation in which are listed all purchasers' names and addresses and the identity of the lots purchased. Individual affirmations must be available for the Secretary's review at all times during the year.

The affirmation must be in the following form:

Developer's Name _____
Developer's Address _____
Purchaser's Name(s) _____
Purchaser's Address(es) (including county) _____
Name of Subdivision _____
Legal Description of Lot(s) Purchased _____

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 24 CFR 1710.13 have been met in the sale or lease of the lot(s) described above.

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

(Date) _____
(Signature of Developer or Authorized Agent) _____
(Title) _____

(b) *Metropolitan Statistical Area.* Metropolitan Statistical Areas are defined by the Office of Management and Budget generally on the basis of population statistics reported in a census. To determine whether a subdivision is located within an MSA and the boundaries of an MSA, contact the Office of Informaiton and Regulatory Affairs, Office of Management and

Budget, 726 Jackson Place NW., Washington, D.C. 20503.

(c) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

20. Section 1710.14 would be amended by revising paragraph (c) to read as follows:

§ 1710.14 Regulatory exemptions.

* * * * *

(c) The sale must also comply with the anti-fraud provisions of § 1710.4 (b) and (c).

21. Section 1710.15 would be removed and reserved.

§ 1710.15 [Reserved.]

22. Section 1710.16 would be amended by removing paragraph (b)(5), and by revising paragraphs (b)(2)(iv), (b)(4), and (e), to read as follows:

§ 1710.16 Regulatory exemption—determination required.

* * * * *

(b) * * *

(2) * * *

(iv) Contains a provision which obligates the developer to deliver, within 180 days of the date the purchaser signed the sales contract, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances.

* * * * *

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and a filing fee of $250.00 in accordance with § 1710.35(a). This fee is not refundable.

* * * * *

(e) The sale must also comply with the anti-fraud provisions of §§ 1710.4 (b) and (c).

* * * * *

23. Section 1710.17 would be amended by revising paragraphs (b)(1) and (b)(2) as follows:

§ 1710.17 Advisory opinion.

* * * * *

(b) * * *

(1) A $250 filing fee in accordance with § 1710.35(a). This fee is not refundable.

(2) A comprehensive description of the conditions and operations of the offering. There is no prescribed format for submitting this information, but the developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

* * * * *

24. Section 1710.21 would be amended by removing paragraph (b), by redesignating paragraph (c) as paragraph (b), and by revising the introductory language in paragraph (a) to read as follows:

§ 1710.21 Effective dates.

(a) *General.* The effective date of an initial, consolidated or amended Statement of Record shall be the 30th day after the filing of the latest amendatory material unless the Secretary notifies the developer in writing prior to such 30th day that:

* * * * *

25. Sections 1700.100 and 1710.102 would be amended by adding at the end of each of them, the following words:

(Approved by the Office of Management and Budget under OMB control number 2502-0243.)

26. Section 1710.103 would be revised to read as follows:

§ 1710.103 Developer obligated improvements.

(a) If the developer represents that it will provide or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it shall be contractually obligated to do so (see § 1715.15(f)), and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as provided for in § 1715.15(f), and an estimated completion date (month and year) must be stated in the Property Report.

(b) If a party other than the developer is responsible for providing or completing roads or facilities for water, sewer, gas, electricity or recreational amenities, that entity shall be clearly identified in accordance with §§ 1710.110, 1710.111 or 1710.114, as applicable. A statement for that facility or amenity shall be included in the proper section of the Property Report to the effect that the developer is not responsible for providing or completing the facility or amenity and can give no assurance that it will be completed or available for use.

27. Section 1710.112 would be amended by revising paragraph (b) to read as follows:

§ 1710.112 Financial information.

* * * * *

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer's ability to complete promised facilities and to discharge its financial obligations. This statement may be omitted if:

(1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting or surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed, within 180 days of the signing of the contract, which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with OILSR as outlined in § 1710.212(e); and

(iii) Any downpayments or deposits are held in an escrow or trust account.

* * * * *

28. Section 1710.116 would be amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively, and by revising paragraph (c)(1) to read as follows:

§ 1710.116 Additional information.

* * * * *

(c) Violations and litigations. * * *

(1) With respect to activities relating to or in violation of a Federal, State or local law concerned with the environment, land sales, securities sales, construction or sale of homes or home improvements, consumer fraud or similar activity, has the developer, the owner of the land or any of their principals officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial interest, been:

(i) Disciplined, debarred or suspended by any governmental agency or is there now pending against them an action which could result in their being disciplined, debarred or suspended (OILSR suspension notices on pre-

effective Statements of Record and amendments need not be listed) or,

(ii) Convicted by any court, or is there now pending against them any criminal proceedings in any court?

* * * * *

29. Section 1710.116 would be further amended by removing paragraphs (d)(4) and (d)(5) and by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 1710.116 Additional information.

* * * * *

(d)(1) * * *

(2) Does the developer have an active resale program? If the answer is "no", include the following statement: "We have no program to assist you in the sale of your lot."

(3) Does the developer have a lot exchange program? If the answer is "yes", describe the program; state any conditions and indicate if the program reserves a sufficient number of lots to accommodate all those wishing to participate. If there is no program or if sufficient lots are not reserved, include one of the following statements, as applicable: "We do not have any provision to allow you to exchange one lot for another" or "We do not have a program which assures that you will be able to exchange your lot for another."

* * * * *

30. Section 1710.117 would be amended by removing paragraph (a)(2)(iii), by redesignating paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(viii) as paragraphs (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), and (a)(2)(vii), respectively, and by revising paragraphs (a)(2)(i), and (a)(2)(ii) to read as follows:

§ 1710.117 Cost Sheet, Signature of Senior Executive Officer.

(a) * * *

(2) *Cost sheet instructions.* (i) All amounts for cost sheet items will be entered before the purchaser signs the receipt. However, any costs which are identical for all lots may be pre-printed.

(ii) If a central water or sewer system will be used in all or part of the subdivision and a private system in all or other parts, then the portion which does not apply to the purchaser's lot shall be crossed out.

* * * * *

31. Section 1710.208 would be amended by revising paragraph (d)(2) to read as follows:

§ 1710.208 General information.

* * * * *

(d) * * *

(2) Submit two copies of a general plan of the subdivision. This general plan shall consist of a map, prepared to scale, and it shall identify the various proposed sections or blocks within the subdivision, the existing or proposed roads or streets, and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map must at least show the lots in the offering and the area included in the Statement of Record. In a consolidated Statement of Record, show the lots and areas being added, as well as the lots and areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be incorporated by reference.

* * * * *

32. Section 1710.209 would be amended by revising paragraph (a)(4) to read as follows:

§ 1710.209 Title and land use.

(a) * * *

(4)(i) Identify the Federal, State and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, and any existing or proposed facilities, common areas or improvements to the subdivision.

(ii) Describe or identify the land or facilities affected; the permit, approval or license required; and indicate whether the permit, approval or license has been obtained by the developer.

(iii) If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state.

(iv) Answers must specifically cover the areas of environmental protection; environmental impact statements; and construction, dredging, bulkheading, etc. that affect bodies of water within or around the subdivision. Also include licenses or permits required by water resources boards, pollution control boards, river basin commissions, conservation agencies or similar organizations.

* * * * *

33. Section 1710.209 would be further amended by revising paragraphs (b) and (c) to read as follows:

§ 1710.209 Title and land use.

* * * * *

(b) *Title evidence.* (1) Submit title evidence which specifically states the status of the legal and equitable title to the land comprising the lots covered by the Statement of Record and any common areas or facilities disclosed in the Property Report. Title evidence need not be submitted for those common areas and facilities which are not owned by the developer.

(2) Acceptable title evidence shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Secretary. Previously issued title evidence may be updated to the date referred to in the preceding sentence by endorsements or attorneys' opinions of title.

(3) The developer shall amend the title evidence to reflect the change in status of title of any previously registered, reacquired lots unless their status is at least as marketable as they were when first offered for sale by the developer as registered lots.

(c) *Forms of acceptable title evidence.* (1) An original of a copy of a signed owner's or mortgagee's policy of title insurance, title commitment, certificate of title or similar instrument issued by a title company authorized by law to issue such instrument in the State in which the subdivision is located. Title insurance policies are not acceptable, nor are certificates or title or similar instruments, which limit insurance and negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner; or

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the State in which the property is located. The title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, provided it meets all general title evidence requirements of this section and a copy of the registration certificate of title is submitted. Title opinions which limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner are not acceptable.

* * * * *

34. Section 1710.209 would be further amended by revising the introductory text of paragraph (e) and by revising paragraph (f)(3)(iv), to read as follows:

§ 1710.209 Title and land use.

* * * * *

(e) *Items to be included in the title evidence.* The acceptable title evidence shall include the following information, instruments and statements and shall not be repeated or duplicated elsewhere in the Statement of Record.

* * * * *

(f) * * *

(3) * * *

(iv) If it is represented that the developer will provide or complete roads or facilities for water, sewer, gas, electric service or recreational amenities, the contract shall contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities (see § 1715.15(f) of this Chapter).

* * * * *

35. Section 1710.212 would be amended by revising the introductory text of paragraph (e)(2), by revising paragraph (e)(3)(ii), by removing paragraphs (e)(3) (iii) and (iv), and by revising paragraphs (f) and (j)(1), to read as follows:

§ 1710.212 Financial information.

* * * * *

(e)(1) * * *

(2) The term "conveys title free of any mortgage or lien" in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

* * * * *

(3) * * *

(ii) Each of the following conditions of paragraphs (e)(3)(ii) (A) and (B) are met, plus one of the conditions of paragraph (e)(3)(ii) (C), (D), or (E):

(A) Downpayments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed, within 180 days of the signing of the contract, which at the time of delivery conveys title free of any mortgage or lien (in lieu of delivery of a deed, the developer may submit to OILSR an Assurance of Title Agreement).

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least $500,000 but less than $1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that all the lots included in the Statement of Record are immediately usable for the purpose which they are sold.

(E)(*1*) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in the Property Report or sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report, and;

(*2*) The developer has made financial arrangements, such as the posting of surety bonds (corporate bonds or individual notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract.

(f) *Newly formed entity.* If the developer is new formed or has not had any sinificant operating experience, an audited or unaudited balance sheet and statements of receipts and disbursements of funds may be submitted.

* * * * *

(j) * * *

(1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Secretary that it then qualifies for an exception from audited statements under paragraph (e)(3)(ii) of this section. For purposes of paragraph (e)(3)(ii)(C) of this section, the Secretary will consider the aggregate sales prices of only the lots yet to be sold, and may consider whether any additions to the subdivisions or reacquisitions of lots already sold would be likely to cause the dollar limits to be exceeded.

* * * * *

36. Section 1710.556 would be amended by revising paragraph (d) to read as follows:

§ 1710.556 Previously accepted state filings—amendments and consolidations.

* * * * *

(d) *Amendments and consolidations for previously accepted State filing in certified States.* If at the time a developer would otherwise make an amendment or consolidation pursuant to this section, a State has been certified with the Secretary pusuant to § 1710.503, then the developer must file such amendment or consolidation pursuant to § 1710.506 rather than this section.

PART 1730—APPLICATION OF REGULATIONS TO EXISTING AND FUTURE FILINGS

37. Section 1730.100 would be revised to read as follows:

§ 1730.100 Application of regulations to existing and future filings.

(a) Amendments to existing registrations shall bring the Property Report portion of the Statement of Record into compliance with the revised regulations. The entire Additional Information and Documentation portion of the Statement of Record need not be submitted. However, a material change in a section or in documentation will require the submission of the entire affected section with any changed supporting documentation. Sections containing information and documents not previously furnished and the financial information and documents required by § 1710.212 must be included.

(b) If, at the time of a material change or the date a conversion is due, there are fewer than 100 lots remaining for sale in a registered offering, an affidavit, in lieu of complete conversion, may be submitted. The developer must state in the affidavit that there are fewer than 100 lots remaining for sale in the registered offering and that it is not expected that this number will be exceeded through reacquisitions or the adding of land. If changes are necessary to the content of the Property Report or Statement of Record, an amendment in the format required by the regulations in effect at the time of the last effective date shall accompany the affidavit. However, the amendment shall include the new revocation language on the cover sheet required by § 1710.105 and the contract provisions required by §§ 1710.103, 1710.209(f), 1710.558 and 1710.559.

(c) Subdivisions which met the eligibility criteria for continuing operation under the five acre, free and clear, limited offering or local offering exemptions previously set forth in former § 1710.15, as published at 45 **Federal Register** 40486–87 (1980), may continue exempt sales so long as all applicable eligibility requirements are met. However, these exemptions are no longer available for new offerings.

Dated: September 7, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-26345 Filed 9-27-83; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 1710 and 1720

[Docket No. N-83-1286]

Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

AGENCY: Office of Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Proposed Guidelines (Interpretive Rule).

SUMMARY: These Guidelines are intended to provide information concerning the requirements for statutory and regulatory exemptions which are available to developers and are contained in the rules and regulations (24 CFR 1710.5 through

1710.18) issued pursuant to the Interstate Land Sale Full Disclosure Act, 15 U.SC. 1701, et seq. The Guidelines contain agency positions, interpretations and descriptions of the individual elements of eligibility criteria for each exemption. The underlying purpose of the Guidelines is to assist developers in identifying eligibility for all self-determined exemptions and to provide guidance in those cases where the submission of material to HUD is required.

DATE: Comments must be received by November 28, 1983.

ADDRESS: Interested persons should submit comments to the Rules Docket Clerk, Office of General Counsel, Room, 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. The comment should state the above docket number, the name and address of the commenter and give reasons for any recommendations. Copies of all written comments received will be available for examination and copying in the Office of Rules Docket Clerk.

FOR FURTHER INFORMATION CONTRACT: Roger G. Henderson, Director, Program Development and Control Division, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington D.C. 20410, (202) 755-5618.

SUPPLEMENTARY INFORMATION: Since April 23, 1979, when the Department last issued Exemption Guidelines (44 FR 24010), the Department has issued numerous opinions and orders on various exemptions. These Guidelines incorporate those interpretations and agency policies into one document.

In addition, new self-determining exemptions were enacted by the Congress in 1979 and reflected in substantive regulations since the last guidelines were published. These Guidelines will assist the public in understanding these exemptions.

The Exemption Guidelines do not change any of the provisions of the published regulations. The Guidelines exist to provide guidance to the public on what constitutes eligibility for exemption, what to do if eligibility exists and what to do if there are questions as to eligibility.

Except to extent that these guidelines are directly related to proposed changes in 24 CFR Part 1710 which are published elsewhere in this edition of the **Federal Register**, the interpretations herein are in fact currently being applied by the Department. However, public comment is invited and the Notice of effectiveness of the Guidelines will include an examination and discussion of any comments received.

When these guidelines become final, they will be published in the Code of Federal Regulations as an Appendix to Part 1710.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that 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 at 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410.

Accordingly, the Exemption Guidelines are published as follows:

Guidelines for Exemptions Available Under the Interstate Land Sale full Disclosure Act

Table of Contents

Part I—Introduction
Part II—Definitions
(a) Anti-Fraud Provisions
(b) Common Promotional Plan
(c) Delivery of Deed.
(d) Lot
(e) Sale
(f) Subdivision
(g) Site
Part III—Exclusions from the Act
Part IV—Statutory Exemptions from the Title Requiring No Determination by HUD
(a) Twenty-Five Lots
(b) Improved Lots
(c) Evidences of Indebtedness
(d) Securities
(e) Government Sales
(f) Cemetery Lots
(g) Sales to Builders
(h) Industrial or Commerical Developments
Part V—Statutory Exemptions From Registration Requiring No HUD Determination
(a) One Hundred Lot Exemption
(b) Twelve Lot Exemption
(c) Scattered Site Exemption
(d) Twenty Acre Lots Exemption
(e) Single-Family Residence Exemption
(f) Mobil Home Exemption
(g) Intrastate Exemption
(h) Metropolitan Statistical Area (MSA) Exemption
Part VI—Regulatory Exemptions From Registration Requiring No HUD Determination
(a) General
(b) Eligibility Requirements
(1) Inexpensive Lots
(2) Five Year Lease
(3) Lot Sales to Developers
(4) Adjoining Lot
(5) Lot Sales to a Government
(6) Sales of Leased Lots
Part VII—Regulatory Exemption. HUD Determination Required
Part VIII—Advisory Opinion
(a) General
(b) Requirements
Part IX—No Action Letter

Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

Authority: Public Law 90-448, 82 Stat. 476, 590; 15 U.S.C. 1701.

Part I—Introduction

The Office of Interstate Land Sales Registration (OILSR) of the U.S. Department of Housing and Urban Development, is offering these guidelines to clarify agency policies and positions with regard to the exemption provisions of the Interstate Land Sales Full Disclosure Act (the Act), Pub. L. 90-448 (15 U.S.C. 1701 et seq.), as amended, and implementing rules and regulations, 24 CFR Part 1710 et seq. The rules and regulations, are in compliance with the Paperwork Reduction Act of 1980 as evidenced by Office of Management and Budget approval number 2502-0243. These guidelines are intended to assist a developer in determining whether or not a real estate offering is exempt from any or all of the requirements of the Act. They supersede any guidelines previously issued by this Office.

This is an interpretive rule, not a substantive regulation. Not every conceivable factor of the exemption process is covered in these guidelines and variations may occur in unique situations. Examples are given, but the examples do not in any way exhaust the myriad possibilities occurring in land development and land sales activity, nor do they set absolute standards.

In order to understand the exemptions, the jurisdictional scope of the Interstate Land Sales Full Disclosure Act must be understood. Effective on June 21, 1980, the provisions of the Act which prohibit misrepresentations or practices which would result in defrauding purchasers generally apply to lot sales or lease programs of 25 or more lots offered pursuant to a common promotional plan where any means or instruments of transportation or communication in interstate commerce, or the mails, are used to sell or lease lots. Interastate use of the mails or advertising in media which has interstate circulation is sufficient to establish jurisdiction. Generally, if a real estate offering falls under the jurisdiction created by the Act, a developer of a subdivision containing 100 or more lots must register the subdivision. Registration includes filing a Statement of Record and supporting documention with HUD and providing prospective purchasers an effective Property Report containing important facts about the subdivision and the developer.

Real estate offerings which meet the eligibility requirements of an exemption are exempt from all or some of the Act's requirements unless the method of operation has been adopted for the purpose of evading the requirements of the law. The exemptions are available for subdivisions with particular characteristics, for certain individual lot sales transactions or for real estate meeting specific criteria. In addtion, the Act gives the Secretary of HUD authority to issue rules and regulations to exempt subdivisions or lots in a subdivision where, by reason of the small amount involved or the limited character of the offering, enforcement of the Act [i.e., full registration and disclosure] is not necessary in the public interest and for the protection of purchasers.

As exceptions to the registration and full disclosure requirements of the Act, exemption requirements are strickly construed. The exemption requirements do not prescribe a method of operation or dictate how a subdivision should be developed. The exemptions are available if the real estate operation falls within their eligibility requirements. If the offering is subject to the Act and does not qualify for an exemption, it must be registered. The requirement of registration does not imply that the real estate value is questioned or the integrity of a business is suspect. The law simply provides that prospective purchasers have the right to adequate disclosure of facts about a subdivision so that an informed decision about the potential purchase can be made.

A developer is not required to submit any documentation or obtain a determination from HUD to operate under any exemption except the exemption provided under 24 CFR 1710.16 (Part VII of these guidelines). However, if there is any question whatsoever concerning whether or not a real estate offering qualifies for one of the statutory exemptions, developers are encouraged to seek legal counsel or obtain an Advisory Opinion from the Department before making any sales or leases. Experience has shown that developers are sometimes ill-advised as to the applicability of the Act to their offering and that such advice can result in violative sales and the disruption of business. The instructions and format for obtaining an Advisory Opinion are contained in § 1710.17 of the regulations and in Part VIII of these guidelines.

To fully understand the basis of eligibility for any of the exemptions, an understanding of frequently-used terms is essential.

Part II—Definitions

The following definitions are included here because of the importance each has to the explanation and understanding of HUD's interpretations of the exemption requirements. Furthermore, with the exception of "lot" and "sale", these definitions are not set forth elsewhere. The definitions of "lot" and "sale" are reported here due to their extraordinary importance to the exemptions.

(a) *Anti-Fraud Provisions* mean those provisions of the Act which prohibit the use of any sales practices, advertising or promotional materials which: would be misleading to purchasers; contain untrue statements; or would operate as a fraud or deceit upon a purchaser. Also prohibited are representations that roads, sewer, water, gas or electric services or recreational amenties will be provided or completed without so stipulating in the contract. The relevant provisions are set forth in section 1404(a)92) (15 U.S.C. 1703(a)(2)) of the Act. The regulations that implement the anti-fraud provisions are set forth in Part 1715, Subpart B.

(b) *Common Promotional Plan* means any plan undertaken by a single developer or a group of developers acting together to offer lots for sale or lease. A common promotional plan is presumed to exist if land is offered by a developer or a group of developers acting in concert and the land is contiguous *or* is known, designated, or advertised as a common development or by a common name. The number of lots covered by each individual offering has no bearing on whether or not there is a common promotional plan.

Other characteristics that are evaluated in determining whether or not a common promotional plan exists include, but are not necessarily limited to: A 10 percent or greater common ownership; same or similar name or identity; common sales agents; common sales facilities; common advertising; and common inventory. The presence of one or more of the characteristics does not necessarily denote a common promotional plan. Conversely, the absence of a characteristic does not demonstrate that there is no common promotional plan.

Two essential elements of a common promotional plan are a thread of common ownership or developers acting in concert. However, common ownership alone would not, in-and-of itself, constitute a common promotional plan. HUD considers the involvement of all principals holding a 10 percent or greater interest in the subdivision to determine whether there is a thread of common ownership. If there is a thread of common ownership or if the developers are acting in concert, together with the use of common advertising or the same sales agent or the same sales office, a common promotional plan is presumed to exist. Experience has led to the conclusion that sales agents generally will direct a prospective purchaser to any or all properties in inventory in order to make a sale.

The phrase "common promotional plan" is most often misunderstood by those who believe that "promotion" implies an enthusiastic sales campaign. Any method used to attract potential purchasers is, in fact, the "promotional plan." For example, direct mail campaigns and free dinners may be the promotional plan of one developer while another developer's promotion may be limited to classified advertisements in a local newspaper.

(c) *Delivery of Deed* means the physical transfer of a recordable deed, executed by the seller, to the purchaser, to the purchaser's agent or to the appropriate governmental recording office. If the transfer (i.e., delivery) is to an agent or to a recording office, there must not be any conditions imposed upon the purchaser or any further action to be taken by either the purchaser or the seller. If delivery is to the place of recordation it must be accompanied by the proper recordation fees.

(d) *Lot* means any portion, piece, division, unit or undivided interest if such interest includes the right to the exclusive use of a specific portion of the land or unit.

This applies to the sale of a condominium or cooperative unit or a campsite as well as a traditional "lot."

If the purchaser of an undivided interest or a membership has exclusive repeated use or possession of a specific designated lot even for a portion of the year, a lot as defined by the regulations exists. For purposes of definition, if the purchaser has been assigned a specific lot on a recurring basis for a defined period of time and could eject another person during the time he has the right to use that lot, then the purchaser has an exclusive use.

(e) *Sale* means any obligation or agreement for consideration to purchase or lease a lot directly or indirectly. The time of sale is measured from when a purchaser signs a contract, even if the contract contains contingencies beyond the control of the seller. For example, if a developer uses a contract which states that the sale is contingent upon obtaining an exemption from HUD, a sale, for purposes of this definition, occurred when the purchaser signed the

contract. The terms "sale" or "seller" include the terms "lease" or

(f) *Subdivision* means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan. Any number of lots, whether divided by the previous owner, divided by the current owner, or merely proposed to be divided, may constitute a subdivision. "Proposed to be divided" includes the developer's intention of subdividing land, as well as the developer's intention of adding additional land or units.

(g) *Site* means a group of contiguous lots whether such lots are actually divided or proposed to be divided. Lots are considered contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or any similar object.

Part III—Exclusions From the Act

The following items are deemed to be excluded from the coverage of the Act:

(a) A reservation is a non-binding agreement used to gauge market feasibility for a developer through which a potential purchaser expresses an interest to buy or lease a lot or unit at some time in the future.

A reservation is excluded from the coverage of the Act.

A deposit may be accepted from the interested person provided that the money is placed in escrow with an independent institution having trust powers and is refundable in full at any time at the option of the potential purchaser. In all cases, a reservation cannot become a binding obligation to purchase a lot; the potential purchaser must take some subsequent action, typically the signing of a sales contract. An option agreement is an arrangement for consideration in which a potential purchaser could forfeit money and therefore could not be considered to be a reservation. In no event may a document purporting to be a Property Report or other evidence of compliance with the Act be delivered to an interested party when entering a reservation agreement for a lot or proposed condominium unit which is neither effectively registered nor exempt.

(b) The sale of undivided interests which do not carry with them the right of exclusive use of a specific lot does not establish jurisdiction. For example, a camping subdivision sold as 400 undivided interests to tenants in common, where purchasers have a co-extensive, non-exclusive right to the use and enjoyment of all campsites on a space available basis and no purchaser has an expressed or implied exclusive right to repeatedly use or occupy any specific campsite, would not constitute the sale of lots as defined by the Act.

Part IV—Statutory Exemptions From the Title Requiring No Determination by HUD

The discussions that immediately follow pertain to sections 1403(a) (1) through (8) of the Act, which correspond to 15 U.S.C. 1702(a) (1) throught (8). The exemptions are set forth in the regulations at 24 CFR 1701.5(a) through (h) and exempt sales from both the anti-fraud and the registration provisions of the Act.

(a) *Twenty-five Lots.*—(Section 1403(a)(1), 15 U.S.C. 1702(a)(10) and 24 CFR 1710.5(a)).

This section exempts the sale or lease of lots in a subdivision (i.e., lots offered pursuant to the same common promotional plan) that contains fewer than 25 lots. If a subdivision contains 25 or more lots, but fewer than 25 of those lots are offered for sale under a common promotional plan, those sales would be exempt. Thus in a subdivision of 28 lots in which 4 lots are not offered for sale because, for example, they are permanently dedicated to the public for a park, the sale of the remaining 24 lots is exempt.

If fewer than 25 lots are acquired in a larger subdivision, the offer of these lots may be subject to the Act if the acquiring party is in any way acting in concert with the previous or current developer of the balance of the subdivision. However, if fewer than 25 lots are acquired in a larger subdivision, the offer of the lots may be exempt if there is neither an identity of interest between the acquiring party and the previous or current developer nor any form of concerted action which constitutes a common promotional plan.

Since the "fewer than 25 lots" exemption is based upon the number of lots as opposed to the number of sales, resales of a lot will not be counted toward the "fewer than 25 lots" limit.

(b) *Improved Lots.*—(Section 1403(a)(2), 15 U.S.C. 1702(a)(2) and 24 CFR 1710.5(b)).

This section exempts: (1) The sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building; or (2) the sale or lease of land under a contract obligating the seller or lessor to erect such a building on the lot within a period of two years.

For a building or unit to be considered complete, it must be physically habitable and usable for the purpose for which it was purchased. A residential structure, for example, must be ready for occupancy and have all necessary and customary utilities extended to it before it can be considered complete. Mobile home lots with pads but no structure, even if improved with utilities and roads, will not qualify for this exemption. In addition, recreational vehicles are not considered to be residential buildings.

If a seller (or developer) is relying on this exemption and the residential, commercial, condominium or industrial building is not complete, the contract must specifically obligate the seller to complete such a building within two years. If this contractual condition is not present, the sale is not exempt. The two-year period begins on the date the purchaser signs the sales contract. The use of a contract that obligates the buyer to build within two years would not exempt the sale.

HUD's interpretation of what constitutes a two-year obligation to construct a building relies, generally, on principles of applicable state contract law in deciding whether or not the seller has, in fact, an obligation to erect a building within two years. Provisions for purchaser financing, pre-sale requirements and remedies clauses are matters to be decided by the parties to the contract.

However, the contract must not allow nonperformance by the seller at the seller's discretion. Contracts which permit the seller to breach virtually at will are viewed as unenforceable because the construction obligation is not an obligation in reality; i.e., the contract is deprived of mutuality of obligation. Thus, for example, a clause that provides for a refund of the buyer's deposit if the seller is unable to close for any reason within the seller's control is not acceptable for use under this exemption. Similarly, contracts which directly or indirectly would result in a waiver of buyer's right to specific performance available under state law are treated as lacking a realistic obligation to construct. HUD's position is not that a right to specific performance of construction be expressed in the contract, but that any such right that purchasers have not be negated. For example, a contract that provides for a refund or a damage action as the buyer's sole remedy would not be acceptable.

Contract provisions which allow for nonperformance or for delays of construction completion dated beyond the two-year period are acceptable if such provisions are legally recognized

as defenses to contract actions in the jurisdiction where the building is erected. Thus, for example, provisions to allow time extensions for events or occurrences such as acts of God, casualty losses or material shortages are generally permissible. Also permissible, in the case of the construction of multifamily condominiums, is a clause conditioning the completion of the sale or closing of title on a certain percentage of sales of other units for a period not to exceed 180 days from the date the first purchaser signs a contract in the project or, in a phased project, from the date the first purchaser signs a sales contract in a phase. However, such a clause may not extend the overall two-year obligation to construct.

Although the factual circumstances upon which nonperformance or a delay in performance is based may vary from transaction to transaction, as a general rule delay or nonperformance must be based on grounds cognizable in contract law such as impossibility or frustration and on events which are beyond the seller's reasonable control. In light of the above, the Department views the contractual focal point to be mutuality of obligation under state law.

Because of the variations in applicable contract law among the states and the many different provisions that are used by sellers in construction contracts, HUD staff may condition its advisory opinions under this exemption on representations by local counsel as to what constitutes mutuality of obligation under state law.

(c) *Evidences of Indebtedness.*—(Section 1403(a)(3), 15 U.S.C. 1702(a)(3) and 24 CFR 1710.5(c))

This section exempts the sale or lease of evidences of indebtedness (typically a note) secured by a mortgage or deed of trust on real estate. The sale of such notes,which is common in the industry, is exempt. However, the underlying sale of the land is not exempt under this provision.

(d) *Securities.*—(Section 1403(a)(4), 15 U.S.C. 1702(a)(4) and 24 CFR 1710.5(d))

This section exempts the sale of securities issued by a real estate investment trust.

(e) *Government Sales.*—(Section 1703(a)(5), 15 U.S.C. 1702(a)(5) and 24 CFR 1710.5(e))

This section exempts the sale or lease of real estate by any government or government agency. This exemption extends to the sale or lease of land by a city, state, or foreign government as well as the sale of land by a city, state, or foreign government as well as the sale of land by the U.S. Government. However, it does not exempt sales or leases of lots by Federal or state chartered and regulated institutions such as banks or savings and loan associations, nor does the fact that the development is assisted, insured or guaranteed under a Federal or state program exempt the lot sales. Municipal Utility Districts and Special Improvement Districts may or may not be considered a qualified government agency under this exemption depending on the legal basis and operation of the District.

(f) *Cemetery Lots.*—(Section 1403(a)(6), 15 U.S.C. 1702(a)(6) and 24 CFR 1710.5(f))

This section exempts the sale or lease of cemetery lots.

(g) *Sales to Builders.*—(Section 1403(a)(7), 15 U.S.C. 1702(a)(7) and 24 CFR 1710.5(g))

This section exempts the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of the lots to persons engaged in such a business. The term "business" is viewed as an activity of some continuity, regularity and permanency, or means of livelihood.

The sale or lease of lots to an individual who purchases the lots to have his or her own home built is not exempt under this provision. The sale to a non-broker who is buying a lot for investment with indefinite plans for resale is also not exempt.

(h) *Industrial or Commercial Developments.*—(Section 1403(a)(8), 15 U.S.C. 1702(a)(8) and 24 CFR 1710.10(h))

This section exempts the sale or lease of real estate which is zoned for industrial or commercial development. If there is no zoning ordinance, the exemption is available only if the real estate is restricted to industrial or commercial development by a declaration of covenants, conditions, and restrictions which have been recorded in the official records of the city or county in which the real estate is located. In addition, the following five conditions must exist in order to establish eligibility for this exemption:

(1) Local authorities have approved access from the real estate to a public street or highway. The approved access to a public street or highway must run to the legal boundary of the subdivision, but need not run to each and every lot;

(2) The purchaser or lessee of the real estate is a duly organized corporation, partnership, trust or business entity engaged in commercial or industrial business. To be considered "duly organized" a purchaser or lessee must have set up an administrative structure to conduct business, such as: Checking accounts; licenses and permits, if required; evidence of intent; and a set of accounting records. The phrase "engaged in business" implies an activity of some continuity, regularity and permanency, or means of livelihood. A new corporation or individual starting a business must be authorized to conduct such business in the jurisdiction in which the subdivision is located;

(3) The purchaser or lessee of the real estate must be represented in the transaction of sale or lease by a representative of its own selection. The term "representative" is not limited to attorneys and does not exclude sole proprietors from representing themselves. Any person can serve as the representative of the purchaser or lessee so long as sufficient evidence can be produced to prove authority to act in that capacity;

(4) The purchaser or lessee of the real estate must affirm in writing to the seller that it is either: Purchasing or leasing the real estate substantially for its own use; or it has a binding commitment to sell, lease or sublease the real estate to an entity which meets the requirements of (2) above; is engaged in commercial or industrial businesses; and is not affiliated with the seller or agent. These affirmations should be retained by the developer in accordance with the statute of limitations of the local jurisdiction or for a period of three years, whichever is longer. If the affirmation is included in the contract, a space must be provided for the purchaser to initial immediately following the affirmation clause; and

(5) A policy of title insurance or a title opinion must be issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as are approved in writing by the purchaser or lessee, preferably in a separate document, prior to the recordation of the instrument of conveyance or execution of the lease. The recordation of a lease is not required. Any purchaser or lessee may waive, in writing in a separate document, the requirement that a policy of title insurance or title opinion be issued in connection with the transaction.

Part V—Statutory Exemptions From Registration Requiring No HUD Determination

The discussions that immediately follow pertain to sections 1403(b) (1) through (8) of the Act, which correspond to 15 U.S.C. 1702(b) (1) through (8) and 24 CFR 1710.6 through 1710.13.

The developer must comply with the Act's anti-fraud provisions (1404(a)(2), 15 U.S.C. 1703(a)(2)) for sales of lots in the subdivision that are exempt under these provisions but that do not qualify for exemptions under 1403(a) (15 U.S.C. 1702(a); 24 CFR 1710.5).

(a) *One Hundred Lot Exemption.*—(Section 1403(b)(1), 15 U.S.C. 1702(b)(1) and 24 CFR 1710.6)

This section exempts the sale of lots in a subdivision if: the subdivision contained fewer than 100 lots on April 28, 1969; has, since that date, contained fewer than 100 lots; and will, in the future, continue to contain fewer than 100 lots. The 100 lot count for purposes of the exemption excludes lots which are exempt from jurisdiction under 24 CFR 1710.5 (b) through (h).

For example, a developer of a subdivision containing a total of 129 lots since April 28, 1969, qualifies for this exemption if at least 30 lots are sold in transactions exempt because the lots had completed homes erected on them. The 30 exempt transactions may fall within any one exemption or a combination of exemptions noted in § 1710.5 (b) through (h) and may be either past or future sales. In the above example, the developer could also qualify if twelve lots had been sold with residential structures already erected on them, nine lots had been sold to building contractors and at least nine lots were reserved for either the construction of homes by the developer or for sales to building contractors. The reserved lots need not be specifically identified.

Developers of subdivisions containing more than 99 lots who wish to operate under this exemption must assure themselves that all lots in excess of 99 have been and will be sold in transactions exempt under § 1710.5 (b) through (h). The sale of more than 99 lots in transactions not exempt under § 1710.5 (b) through (h) would nullify this exemption for prior and future sales and may result in voidable prior sales at the purchaser's option.

It should be noted that the "25 lot" exemption under § 1710.5(a) cannot be used in connection with the "100 lot" exemption.

Since the "100 lot" exemption applies to the number of the lots as opposed to the number of sales, resales of a lot will not be counted toward the "100 lot" limit. However, the sale and resale of the lot must comply with the anti-fraud provisions.

If fewer than 100 lots are acquired in a larger subdivision, the offer of these lots will not be exempt if the acquiring party is, in any way, acting in concert with the previous or current developer of the balance of the subdivision so as to create a common promotional plan for 100 or more lots unless the other lots qualify for exemption under § 1710.5. However, if fewer than 100 lots are acquired in a larger subdivision, the offer of the lots may be exempt if there is neither an identity of interest between the acquiring party and the previous or current developer nor a form of concerted action constituting a common promotional plan.

(b) *Twelve Lot Exemption.*—(Section 1403(b)(2), 15 U.S.C. 1702(b)(2) and 24 CFR 1710.7)

This section exempts the sale of lots from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period. Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve-month period which began with the anniversary date of the first sale after June 20, 1980. For example, if a developer's first lot sale after June 20, 1980 occurred on August 5, 1980 and no more than eleven additional lots in the subdivision were sold through August 4, 1981, the sales would be exempt.

During the second year of operation under this exemption (beginning on August 5, 1981 in the example) at least the first twelve lot sales would be exempt. However, if lot sales exceed twelve in the second or any subsequent year, the exemption would terminate on the sale of the thirteenth lot. Once eligibility has been terminated, the exemption is no longer available and cannot be recaptured by the same developer for the same subdivision even if there are fewer than twelve lots sold in subsequent years.

A developer may apply to the Secretary to establish a different twelve-month period for use in determining eligibility for the exemption, and the Secretary may allow the change if it is for good cause and consistent with the purpose of this section. An example would be to change the year to coincide with the developer's fiscal or tax year.

In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980 are counted, whether or not the lot is registered or the transaction is otherwise exempt, such as the sale of a home and lot package. This exemption extends to twelve lots, not twelve sales. Each lot would be counted in the sale or lease of multiple lots.

Since the "twelve lot" exemption applies to the number of lots as opposed to the number of sales, resales of a lot will not be counted toward the "twelve lot" limit. The sale and resale of a lot must qualify for the exemption and comply with the anti-fraud provisions. However, lot sales exempt under § 1710.5 (b) through (h), while counted toward the total of twelve, are not required to comply with the anti-fraud provisions.

(c) *Scattered Site Exemption.*—(Section 1403(b)(3), 15 U.S.C. 1702(b)(3) and 24 CFR 1710.8)

This section exempts from the registration requirements of the Act the sale of lots in a subdivision consisting of noncontiguous parts if: (1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and (2) each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

This exemption is intended to relieve the developers of small, scattered offerings of the requirement to register their subdivisions. The exemption may also apply to real estate brokers who have an ownership interest in more than one site, each containing 20 or fewer lots.

If a developer intends to rely on this exemption, it is important that the developer understand the definition of subdivision, how a common promotional plan is determined and what constitutes a site. These terms are defined in Part II of these guidelines.

Lots which are contiguous when they are originally platted or developed are considered to remain contiguous. For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(d) *Twenty Acre Lots Exemption.*—(Section 1403(b)(4), 15 U.S.C. 1702(b)(4) and 24 CFR 1710.9)

This section exempts the sale of lots in a subdivision from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the

total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

This exemption applies to the entire subdivision and requires that each and every lot in the subdivision be twenty acres or larger in order for the subdivision to qualify. If a single lot offered pursuant to the common promotional plan (i.e., subdivision) is less than twenty acres in size, no lot in the common promotional plan qualifies for exemption.

If a developer has two sites which comprise the subdivision and only one of the sites contains lots which are all greater than twenty acres in size, the offering of these lots would not be exempt under this provision. All lots offered pursuant to a common promotional plan must be considered.

A subdivision which is platted of record and contains a single lot which is less than twenty acres cannot qualify for the exemption even if the lots are offered in multiples which aggregate twenty acres or more. Further, if the platted lots are all twenty acres or more in size, but a lot is divided and a portion which is less than twenty acres, is offered for sale, the exemption would not be available to the subdivision.

(e) *Single-Family Residence Exemption.*—(Section 1403(b)(5), 15 U.S.C. 1702(b)(5) and 24 CFR 1710.10)

(1) *General.*—This Section provides an exemption for the sale of lots that are limited to single-family residential use. Developers are advised to carefully review the eligibility requirements listed below before proceeding with sales. Note especially that some of the eligibility requirements pertain to the entire subdivision while others apply to individual lots.

(2) *Subdivision Requirements.*—All lots offered under the same common promotional plan (i.e., subdivision) must comply with the two (2) eligibility requirements listed below in order for any lot to be eligible for this exemption.

(i) The subdivision must meet all all local codes and standards. If local codes expressly permit incremental development, then only the portions of the subdivision being offered at any given time are required to meet the codes and standards to satisfy this requirement of the exemption. Otherwise, the entire subdivision must qualify.

(ii) In the promotion of the subdivision there cannot be offers, by direct mail or telephone solicitation, of gifts, trips, dinners or the use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot. There is no prohibition against using the mails or telephone to promote or advertise the offering or to respond to inquiries from potential purchasers. The only prohibition is that these meida cannot contain offers of gifts, trips, dinners or like inducements. Likewise, there is no prohibition (other than the above) for the use of the various other advertising media.

In order to qualify for this exemption, the subdivision must have complied with the requirements pertaining to advertising and promotional methods since June 13, 1980, the date the exemption became effective.

(3) *Lot Requirements.*—Having met the eligibility requirements for a subdivision, each lot offered under the exemption must additionally comply with the eight (8) requirements listed below. Lots within a subdivision that do not comply with these additional requirements must either be registered or sold in compliance with another exemption, even though the two subdivision requirements are complied with.

(i) the lost must be located within a municipality or county where a unit of local government or the State specifies minimum standards for the development of subdivision lots taking place within its boundaries. The following is a list of standards which must be specified and adhered to:

(A) Lot dimensions.
(B) Plat approval and recordation.
(C) Roads and access.
(D) Drainage.
(E) Flooding.
(F) Water supply.
(G) Sewage disposal.

(ii) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Mobile homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision. Recreational vehicles are not considered to be residential buildings. Mobile homes must be affixed to the real estate to be eligible, e.g., connected to water, sewer and electrical sources and on blocks with skirts.

The phrase " * * * in the absence of a zoning ordinance" is interpreted in its literal sense. The existence of a zoning ordinance other than single-family residence zoning is considered to be disqualifying even if there are covenants or restrictions limiting construction to single-family residences. Situations such as the foregoing would, however, be a candidate for a "substantial compliance" exemption (24 CFR 1710.16) if all other eligibility requirements of the exemption are complied with or substantially complied with. "Substantial compliance" is discussed in Part VII of these Guidelines.

(iii) The lot must be situated on a paved street or highway which has been built to standards prescribed by a unit of local government in which the subdivision is located and be acceptable to that local unit. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption, paved means concrete or pavement with a bituminous wearing surface that is impervious to water, protects, the base and is durable under the traffic load and maintenance contemplated.

(iv) The unit of local government or a homeowners' association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. The obligation of the local government entity to accept responsibility for maintaining the roads may be evidenced by an ordinance which binds the government to maintain the streets or by a written statement signed by the appropriate government official. Maintenance independently provided by a developer is not acceptable under this exemption.

In any case in which a homeowners' association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to a purchaser's signing a contract or agreement to purchase, provide the purchaser with a good faith written estimate of the cost of carrying out the responsibility over the first ten years of ownership. A "good faith estimate" means a current estimate based on documentary evidence, usually obtainable from the suppliers of the services.

(v) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must be obligated to install the facilities within 180 days following closing.

The obligation may be in the form of a local statute or written agreement signed by the appropriate government authority. A local code or statute which obligates the subdivider or developer to complete installation of water and sewage disposal systems within a certain time does not satisfy this requirement of the exemption.

For subdivisions that will not have a central water or sewage disposal system, there must be assurances that an adequate potable water supply is available year-round to service the subdivision and that each lot is approved for the installation of a septic tank at or prior to the time of sale.

Assurances of an adequate, drinkable water supply can be obtained from a hydrologist or the local health department. Approval for the installation of a septic tank must come from the appropriate government authority, usually the local health department, local governmental engineer or county sanitarian.

(vi) The contract of sale must require delivery of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances, to the purchaser within 180 days after the signing of the sales contract. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must also warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through or under the seller.

(vii) At the time of closing, a current title insurance binder, policy or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller. In order to satisfy this requirement, a developer may want to obtain the purchaser's written approval of exceptions to title prior to closing, although the actual title binder, policy or opinion must be current at the time of closing and show that title is vested in the seller. If closing occurs and the purchaser has not approved the exceptions to title in writing, the sale would not be exempt under this provision.

The party that bears the cost of the title binder, policy or opinion is not relevant to eligibility for the exemption.

Unless otherwise defined by state law, the "time of closing" is the date that legal title to the property is transferred from seller to buyer.

(viii) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(f) *Mobile home exemption.*—(Section 1403(b)(6), 15 U.S.C. 1702(b)(6) and 24 CFR 1710.11)

This section exempts the sale of a mobile home lot from the registration requirements of the Act when all eligibility requirements listed below are met.

For purposes of this exemption, a mobile home is a unit receiving a label in conformance with HUD Regulations implementing the Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.).

(1) The lot is sold as a homesite by one party and a mobile home is sold by another party and the individual contracts of sale:

(i) Obligate the sellers to perform, contingent upon the other seller carrying out its obligations, so that a completed mobile home will be placed or erected on a completed homesite within two years after the date the purchaser signed the contract to purchase the lot (see Part III(b) of these guidelines for HUD's position on two year completion requirements);

(ii) Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;

(iii) Provide that funds received by the sellers will be released to the buyer upon demand if either of the sellers do not perform; and

(iv) Contain no provisions which restrict the purchaser's right to specific performance under the state law.

(2) The homesite is developed in conformance with all local codes and standards, if any, for mobile home subdivisions.

(3) At the time of closing:

(i) Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line;

(ii) The homesite is accessible by roads;

(iii) The purchaser receives marketable title to the lot; and

(iv) Other common facilities represented in any manner by the developer or agent to be provided are completed or, in the alternative, there are letters of credit, cash escrows or surety bonds in a form acceptable to the local government in an amount equal to 100 percent of the estimated cost of completion. Corporate bonds are not acceptable for purposes of the exemption.

(g) *Intrastate Exemption.*—(Section 1403(b)(7), 15 U.S.C. 1702(b)(7) and 24 CFR 1710.12)

This section provides an exemption for the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate in nature if the lot is free and clear of all liens, encumbrances and adverse claims. There are six (6) eligibility requirements which must be met before a lot qualifies for this exemption. These eligibility requirements follow:

(1) The sale of lots in the subdivision after December 20, 1979, must have been and continue to be restricted solely to residents of the state in which the subdivision is located unless the sale is exempt under 24 CFR 1710.5, 1710.11 or 1710.13. However, while the sale of lots exempt under the foregoing sections may be to out-of-state purchasers without affecting the eligibility of other lots, the sale of registered or otherwise exempt lots in the same subdivision to non-residents would disqualify the subdivision for this exemption.

Residency is determined by state law. For purposes of this exemption a developer may rely on a statement signed by the purchaser or lessee as to the state of residence. Obviously, the prospective purchaser must be an actual resident of the state at the time of signing the sales contract as opposed to a person visiting the state or planning to move into the state. However, service personnel may at their option claim the state in which they are stationed.

(2) The purchaser or purchaser's spouse must make a personal on-the-lot inspection of the lot to be purchased before signing a contract. Evidence of this inspection should be retained by the developer.

(3) Each contract: (i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities.

If the developer is not responsible for providing or completing a particular service or amenity, the contract should make it clear that it is up to the buyer to make the necessary arrangements for the desired services. If a third party is involved, the contract must specify whether the buyer or seller is responsible for making the required arrangements;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed.

This estimate is required for any facility the developer promises or

indicates will be completed. Estimates should be based on documentary evidence, such as contracts, engineering schedules or other evidence of commitments to complete the facilities and amenities; and

(iii) Contains a non-waivable provision giving the purchaser the right to revoke the contract until at least midnight of the seventh calender day following the date the purchaser signed the contract. This revocation right cannot be restricted to a specific method of notification such as requiring notification to be inwriting. If the purchaser is entitled to a longer revocation period by operation of state law, that period automatically becomes the Federal revocation period and the contract must contain the requirements of the longer period. If the purchaser revokes the contract during this "cooling-off period", he or she is entitled to a full refund of all money paid.

(4) The lot being sold must be free and clear of all liens, encumbrances and adverse claims. The fact that a title company will insure against a lien, encumbrance or adverse claim has no bearing in determining whether or not be sale qualifies for the exemption. Except as noted below, the existence of a lien, encumbrances or adverse claim disqualifies the affected lot or lots for this exemption. The only exceptions to this requirement are listed below.

(i) Mortgages or deeds of trust containing release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver a free and clear warranty deed or its equivalent under local law within 180 days (constructive delivery is acceptable); and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered. The escrow account must be with an institution which has trust powers or in an established bank, title insurance, abstract or escrow company, which is doing business in the jurisdiction in which the property is located. The purchaser's earnest money payment or any other payment by the purchaser cannot be used to obtain a release from the mortgage and may not be released from escrow until the deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

Other acceptable property reservations are easements for roads and electric lines to serve the subdivision as well as certain drainage easements. The reservation of subsurface oil, gas or mineral rights is acceptable unless the reservation expressly or impliedly includes the right of ingress and egress upon the property. Examples of the types of reservations and easements which are unacceptable and disqualify the burdened property for the exemption include easements for high power transmission lines, telephone long lines, pipelines and bridle trails.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a State or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions which are mutually enforceable by all lot owners in the subdivision.

Developers who wish to maintain control of a subdivision indefinitely through a Property Owners' Association, Architectural Control Committee, and/or restrictive convenants will find the requirements of this exemption unsuitable.

In recognition of the fact that developer control is unavoidable until lots are sold, HUD has provided in the Proposed Rule that a developer must transfer control to all lot owners at or before that point-in-time when the developer no longer owns a majority of total lots in, or planned for, the subdivision, for the purposes of this exemption. Relinquishment of developer control must require affirmative action, usually in the form of an election based upon we vote per lot.

The developer may continue to participate in the control of the subdivision to the extent that lots remain unsold. For example, a developer who still owns thirty percent of the lot inventory has a thirty percent voting block on issues regarding the subdivisions.

HUD has found acceptable those instances where, during the initial stages of development, the developer appointed a governing body (panel, commission, etc.) and subsequently all lot owners elected and re-elected the same individuals to administer subdivision control.

To be enforceable, restrictions must be part of a general plan of development. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every applicable lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations are excepted from the term "liens" but must be disclosed in the "Intrastate Exemption Statement."

Many of the land patents by which land west of the Mississippi River was originally conveyed contain reservations to the United States for minerals and water rights-of-way for canals and ditches. These reservations as well as any other Federal grants or reservations must be disclosed but are not disqualifying factors.

(5) Prior to the sale the developer discloses in a written statement (see sample below) to the purchaser all liens, reservations, taxes, assessments and restrictions applicable to the lot purchased. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered.

Neither the statement nor the written receipt have to be submitted to HUD, but copies of the purchaser receipts and should be available for review upon demand by the Secretary of HUD or designee. It is suggested that the developer retain the purchaser receipts for at least three years.

(6) The written statement (see sample below) also includes good faith cost estimates for providing electric, water, sewer, gas and telephone service to the lot. Estimates must include all costs associated with obtaining the services. For example, if private wells are the water source, the estimate should include the cost of the well, pump, casing, etc. Likewise, if butane or propane gas is used, the statement must include the cost of installing a tank and the per gallon cost.

The estimates for services applicable to unsold lots must be updated every two years or more frequently if the developer has reason to believe that at least a $100 increase or decrease for a particular item has occurred. The dates on which the estimates were made must be included in the statement.

Effective state property reports or disclosure statements containing all the information required in the "Intrastate Exemption Statement" may be used in lieu of a separate statement. State property reports which do not contain all the information required in the "Intrastate Exemption Statement" may be used only if they are supplemented with the missing information.

Sample Intrastate Exemption Statement

Intrastate Exemption Statement

Name of Developer ——————
Address ——————
Name of Subdivision ——————
Location ——————

Liens

(Provide a clear and concise listing of all liens on the property. As used in this statement, liens are security interests such as mortgages or deeds of trust, tax liens, mechanics liens or judgments. Liens which are acceptable for purposes of the exemption are those which contain release provisions for the individual lot purchased but only if the contract of sale obligates the developer to deliver a deed within 180 days and the purchaser's payments are held in an independent escrow account until a deed is delivered and, in the case of leases, liens which are subordinate to the leasehold interest and do not affect the lessee's right to enjoy or use the lot.)

A chart similar to the following may be used:

Type of lien	Amount of lien	Lots subject to lien

Reservations

(Disclose all easements and reservations affecting the lots which are offered for sale. The preceding narrative contains examples of easements and reservations which are acceptable.)

Taxes

(Provide sufficient information to enable a purchaser to estimate the annual taxes due on the lot purchased.)

Assessments

(Disclose all assessments, fees and dues which have been imposed or may be imposed. The list of assessments, fees and dues must show the rates and amounts and explain who has the authority for imposing the listed assessments, fees and dues.)

Restrictions

(Recite verbatim all restrictions that apply to the lots being offered. In the alternative, the developer may attach a complete copy of all restrictions affecting the lots. If the restrictions do not apply to all the lots in the offering, the developer should specify which lots are affected by the restrictions. In addition, the developer should explain who has the authority to enforce the restrictions and indicate whether or not the restrictions are recorded.)

Utility Cost Estimates

(Disclose a good faith estimate of the cost to the purchaser of providing water, electric, telephone, sewage disposal and gas service to each lot offered under the exemption. The estimate must include all costs associated with obtaining the services.)

A chart similar to the following may be used.

Lot No.	Water	Electric	Telephone	Sewage disposal	Gas
(Under each heading list the estimated cost to the purchaser and the date the estimate was made.)					

I affirm that to the best of my knowledge the above information is accurate and complete.
(Signature of Developer or Authorized Agent)
(Date) ——————
(Title) ——————

Purchaser's Acknowledgment

(The developer must obtain a written receipt from the purchaser acknowledging that the purchaser received a written statement(s) of all liens, reservations, taxes, assessments and restrictions applicable to the lot and good faith estimates of the cost of providing electric, water, sewer, gas and telephone service to the lot.)

The receipt may be in the following form:

Sample Receipt

I acknowledge that I have received an Intrastate Exemption Statement listing all liens, reservations, taxes, assessments, restrictions and estimates of utility costs applicable to (identify the subdivision and its location) from (name of developer). I have made a personal on-the-lot inspection of (identify the lot) which is the lot I am interested in buying or leasing.
(Signature of Purchaser) ——————
(Date) ——————

(h) *Metropolitan Statistical Area (MSA) Exemption.*—(Section 1403(b)(8), 15 U.S.C. 1702(b)(8) and 24 CFR 1710.13)

This section provides an exemption for the sale or lease of lots in a subdivision located in a Metropolitan Statistical Area (MSA). The eligibility criteria for the MSA Exemption is the same as that of the Intrastate Exemption with the following exceptions:

(1) The subdivision must have contained fewer than 300 lots on and since April 28, 1969 and continue at or below that quantity in the future;

(2) The lot(s) must be located in a MSA as defined and designated by the U.S. Office of Management and Budget;

(3) The principal residence of each purchaser must be within the same MSA;

(4) Adverse claims which are disqualifying for the Intrastate Exemption are acceptable for the MSA Exemption. The only requirement in this regard is for the adverse claim to be disclosed in the MSA Exemption Statement. The party making the claim, the basis of the claim and the property affected by the claim must be identified; and

(5) Although the MSA exemption is self-determining, a written affirmation must be submitted by developers relying on this exemption. The due date is January 31 of each year. Failure to submit the affirmations will disqualify the subdivision for this exemption.

The written affirmation must be in the following format:

Affirmation

Developer's Name ——————
Developer's Address ——————
Purchaser's Name(s) ——————
Purchaser's Address(es) (including county) —
Name of Subdivision ——————
Legal Description of Lot(s) Purchased ——————

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 24 CFR 1710.13 have been met in the sale or lease of the lot(s).

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.
(Date) ——————
(Signature of Developer or Authorized Agent) ——————
(Title) ——————

The sample Intrastate Exemption Statement shown above may be used as a guide in preparing the MSA Exemption Statement. Simply substitute references to the MSA Exemption in lieu of references to the Intrastate Exemption and add a provision for disclosure of *Adverse Claims* after the discussion of *Restrictions* and before the caption *Utility Cost Estimates.*

Part VI—Regulatory Exemptions From Registration Requiring No HUD Determination—(24 CFR 1710.14)

(a) *General.* The Secretary of HUD has established several regulatory exemptions from the registration and full disclosure requirements of the Act (i.e., filing a Statement of Record and furnishing a Property Report). These exemptions are self-determining and do not require a submission to HUD.

In order for a developer to qualify, the eligibility criteria must be complied with at all times. At the point-in-time when a developer fails to comply with the eligibility criteria, the exempt status immediately ends. Furthermore, if there are reasonable grounds to believe that exemption under 24 CFR 1710.14 in a particular case is not in the public interest, the Secretary may then deny further eligibility of an otherwise eligible subdivision, site or lot for the exemption after notice and an opportunity for hearing. Proceedings under this provision will follow the requirements set forth in the regulations (24 CFR 1720.105, et seq.) and be patterned after

the notice and time requirements of a proceeding pursuant to 24 CFR 1710.45(b)(1).

If a sale meets any one of the following requirements, it qualifies for exemption from the registration and full disclosure requirements of the Act. However, qualifying sales must comply with the anti-fraud provisions.

(b) *Eligibility Requirements.*—(1) *Inexpensive Lots* (24 CFR 1710.14(a)(1)). The sale or lease of a lot for less than $100, including closing costs, is exempt if the purchaser or lessee is not required to purchase or lease more than one lot. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(2) *Leases for Limited Duration* (24 CFR 1710.14(a)(2)). The lease of a lot for a term of five years or less is exempt if the terms of the lease do not obligate the lessee to renew. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

The use of an arrangement which is called a lease but is tantamount to the sale or long-term lease of a lot would not qualify for this exemption; i.e., a lease with a large initial payment or substantial payments over five years and token payments thereafter.

A five-year lease with an option to purchase or renew would be suspect for eligibility under this exemption and may or may not qualify depending on the overall transaction. In these cases a request for an Advisory Opinion is strongly recommended.

(3) *Lots Sold to Developers* (24 CFR 1710.14(a)(3)). The sale or lease of lots to a person who is engaged in a bona fide land sales business is exempt. For a transaction to qualify for this exemption, the purchaser must be a person who plans to subsequently sell or lease the lot(s) in the normal course of business. The term "business" refers to an activity of some continuity, regularity and permanency, or means of livelihood. The sale or lease of lots to an individual who is buying the property for investment to be sold at some unforeseeable time in the future would not be exempt under this provision. This exemption is available on a lot-by-lot basis, although most transactions would presumably include more than one lot. The entire subdivision need not qualify.

(4) *Adjoining Lot* (24 CFR 1710.14(a)(4)). The sale or lease of a lot to a purchaser who owns the contiguous lot which has a residential, commercial, or industrial building on it is exempt. This exemption permits a developer to sell or lease unimproved lots to persons wishing to enlarge the property on which their home or business is located. This exemption is available on a lot-by-lot basis.

(5) *Lot Sales to a Government* (24 CFR 1710.14(a)(5)). The sale or lease of real estate to a government or government agency is exempt. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(6) *Sales of Leased Lots* (24 CFR 1710.14(a)(6)). The sale of a lot or lots which the purchaser has leased and on which the purchaser has maintained his or her primary residence for at least one year is exempt. Typically, these sales will occur in a mobile home subdivision. This exemption is available on a lot-by-lot basis. The entire subidivision need not qualify.

(c) *Termination.*—If HUD has reasonable grounds to believe that exemption from registration in a particular case is not in the public interest, HUD may terminate the exemption as to a subdivision or to particular lots in a subdivision. Termination could be ordered only after the developer is notified of HUD's intention to terminate and is afforded a hearing opportunity. The basis for termination will vary from case-to-case but would indicate situations involving unlawful sales practices by the developer or its agents, insolvency or adverse information about the lots or the subdivision that should be disclosed to purchasers.

Part VII—Regulatory Exemption—HUD Determination Required—(24 CFR 1710.16)

An Exemption Order is available for a subdivision or certain lots in a subdivision which technically do not comply with the eligibility requirements of one of the other available exemptions. However, to qualify for an Exemption Order the offering must substantially comply with the eligibility requirements.

In evaluating the circumstances of an Exemption Order request, HUD examines the basic intent or rationale and legislative history of the exemption which the developer claims to substantially meet. If the offering is not consistent with the basic intent or rationale, an Exemption Order will not be issued even though some of the technical requirements of that exemption are met.

Offerings that involve circumstances which are equal to or better than the technical requirements or which are consistent with the basic intent of the exemption will be judged to be in substantial compliance and an Exemption Order will be issued. It should be noted that an Exemption Order applies only to sales after the date of the Order and has no retroactive effect.

This is the only exemption which requires submission of a request and a determination by HUD before it is effective. Developers wishing to request an Exemption Order must submit the information listed below.

(a) A detailed statement describing how the proposed sales of lots meets or substantially meets each of the eligibility requirements of the exemption which the developer claims to substantially meet.

(b) A copy of the contract to be used. The contract must:

(1) Specify the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities. If the developer is not responsible for providing or completing a particular service, the contract should make it clear that it is up to the buyer to make the necessary arrangements for desired services;

(2) Contain a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(3) Contain a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period; and

(4) Contain a provision which obligates the developer to deliver a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances, to the purchaser within 180 days of the date the purchaser signed the sales contract.

(c) A plat of the entire subdivision with the lots subject to the exemption delineated.

(d) A description of how the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) Documentation to establish that each purchaser or purchaser's spouse will make an on-the-lot inspection of the lot to be purchased before the contract is signed.

(f) A filing fee of $250 in the form of a certified check, cashier's check or postal money order made payable to the U.S. Treasury.

If, after an Exemption Order has been issued, HUD has reasonable grounds to believe that the exempt status of the

subdivision or individual lots is not in the public interest, the Exemption Order may be terminated. Such an action would be preceded by a notice giving the developer an opportunity to request a hearing on the allegations leading to termination. For example, proceedings may be initiated due to the apparent omissions or misrepresentations in the information upon which the Exemption Order was based, the unethical conduct of the developer or the developer's agent or the presence of adverse conditions at or about the real estate which should be brought to the attention of purchasers by way of a disclosure document.

Some examples of substantial compliance are listed below. These are examples only and presume that all other applicable eligibility requirements of the exemption are either fully met or substantially met. It should be remembered that substantial compliance can occur with virtually any of the twenty-two available exemptions.

(1) One of the eligibility requirements for the Single-Family Residence Exemption is that the lots be zoned single-family residential or, in the absence of a zoning ordinance, restricted to single-family residence development by enforceable covenants or restrictions. As stated before, the phrase "* * * in the absence of a zoning ordinance * * *" is interpreted in its most literal sense. Therefore, the existence of any zoning ordinance other than single-family residence zoning is a disqualifying factor for the exemption.

However, substantial compliance would be considered if a different zoning ordinance existed, e.g., agricultural, and the enforceable covenants or restrictions limited development to single-family residences. On the other hand, the existence of other types of zoning, e.g., industrial, could not be considered substantially equivalent to single-family zoning and an Exemption Order would generally not be issued even if the enforceable covenants or restrictions limited development to single-family residences.

In the first example—agricultural—it is felt that the "intent test" would be met since farming in the immediate surrounding area would not necessarily be adverse to single-family residences. In the second example—industrial—the "intent test" would not be met since the permissible existence of factories in the immediate surrounding area would not be conducive to single-family residences.

(2) Another eligibility requirement for the Single-Family Residence Exemption states that, at the time of closing, potable water, sanitary sewage disposal and electricity must be extended to each lot or the unit of local government must be obligated to install these facilities within 180 days following closing.

Substantial compliance with this provision would be considered in those cases where one or more of these utilities is not available but the developer has a contract with a publicly regulated utility to install the facilities within 180 days follwing closing or upon demand of the purchaser.

Furthermore, substantial compliance would be considered if the utility trunk lines are "reasonably close" to the lots instead of at each lot line. "Reasonably close" has been defined by HUD to mean being near enough that the cost to fully extend the line to the lot(s) would not exceed $300 plus normal hook-on fees.

(3) An eligibility requirement for the Intrastate Exemption is that the lot sold must be free and clear of all liens, encumbrances and adverse claims. Mineral reservations have been deemed to be acceptable so long as the reservation does not include the right of ingress or egress upon the property.

If the right of ingress or egress exists, substantial compliance will be considered if there are written provisions from the owner(s) of the mineral rights for compensating the lot owner for loss of the use or enjoyment of the property when such rights are exercised.

Part VIII—Advisory Opinion—Secretary's Opinion May Be Requested—(24 CFR 1710.17)

(a) *General.* When it is not clear that an offering is either exempt under the self-determined statutory or regulatory provisions or whether jurisdiction exists, an Advisory Opinion may be requested to clarify the situation. The filing requirements are found in 24 CFR 1710.17 of the regulations and are described in (b) and (c) below.

The material to be submitted with all requests for Advisory Opinions is described under (b) below. In most cases, depending on the provision under which an exemption is claimed, additional documentation is needed before an opinion can be given. Review (c) below to determine what additional documentation is customarily needed before submitting a request.

HUD's Advisory Opinions are based upon and limited to the representations made by the developer. Therefore, if a favorable Advisory Opinion is issued based upon incomplete, improper or incorrect representations, the Opinion has no binding effect.

(b) *Basic Requirements For Submission.* (1) A $250.00 filing fee in form of a certified check, cashier's check or postal money order made payable to the U.S. Treasury.

(2) A comprehensive description of the conditions and operations of the offering. Specify the provision(s) of the Act or regulations under which sales are believed to be exempt or why there is not jurisdiction.

(c) *Additional Requirements For Submission.* Depending on the provision under which an exemption is claimed, a developer may be requireed to submit additional information. Beginning with the exemption under 24 CFR 1710.5(a) of the regulations and ending with 24 CFR 1710.14, the additional information that should be submitted with a request for an Advisory Opinion is listed below. In some cases, information or documentation other than that specified may be requested after a submission has been reviewed by HUD.

(1) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(a), submit a plat of the subdivision. Submit a listing of any other properties in which the developer has an interest and the geographic relationship of those properties to the subdivision for which the exemption is claimed. If other properties are divided or proposed to be divided, indicate the total number of lots planned. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the lots are marketed, i.e., who sells the lots, how the lots are advertised, whether prospective purchasers are referred between subdivisions, etc.

(2) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(b), submit a copy of the contract of sale or lease.

(3) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(c), describe the security arrangement and submit a copy of the evidence of indebtedness.

(4) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(d), no additional documentation is customarily required to be submitted with the request.

(5) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(e), specify the Government agency selling the property and submit the enabling legislation.

(6) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(f), no additional documentation is customarily required to be submitted with the request.

(7) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(g), specify the assurances that the purchaser or lessee is engaged in the business of building or is acquiring the real estate for resale or lease to a builder.

(8) To obtain an Advisory Opinion

pertaining to 24 CFR 1710.5(h), submit a plat and supporting documentation, including a copy of the instrument containing the purchaser or lessee affirmation and evidence of the zoning or, in the absence of zoning, restrictive covenants.

(9) To obtain an Advisory Opinion pertaining to 24 CFR 1710.6, submit a plat of the subdivision. In addition, submit a listing of any other properties in which the developer has an interest and the geographic relationship of those properties to the subdivision for which the exemption is claimed. If other properties are divided or proposed to be divided, indicate the total number of lots planned. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the lots are marketed, i.e., who sells the lots, how the lots are advertised, whether prospective purchasers are referred between subdivisions, etc.

(10) To obtain an Advisory Opinion pertaining to 24 CFR 1710.7, submit a list of all lots sold under the same common promotional plan since June 20, 1980. (Review Part II(b) of these Guidelines for an explanation of common promotional plan.) Indicate the date of each sale. State whether the developer has been involved in the sale of any other real estate since June 20, 1980 and indicate how it is intended that future sales will be restricted.

(11) To obtain an Advisory Opinion pertaining to 24 CFR 1710.8, submit a plat of the site and list the name and geographic location of all other properties in which the developer has an interest. State the extent of the developer's interest.

(12) To obtain an Advisory Opinion pertaining to 24 CFR 1710.9, submit a plat of the subdivision with the acreage of each lot clearly delineated. In addition, substantiate that all lots offered under the same common promotional plan are greater than 20 acres in size and have been that size since April 29, 1969. Therefore, describe all properties in which the developer has an interest and the geographic relationship of such properties to the subdivision for which the exemption is claimed. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the properties are marketed, i.e., who sells the lots, how the lots are advertised, whether purchasers are referred between subdivisions, etc.

(13) To obtain an Advisory Opinion pertaining to 24 CFR 1710.10, address each of the subdivision requirements and the eight lot requirements as set forth in Part IV(e) of these Guidelines. Include a copy of the contract of sale and a copy of the state or local minimum standards. Describe the marketing and promotion of the subdivision.

(14) To obtain an Advisory Opinion pertaining to 24 CFR 1710.11, identify who is selling the lot and who is selling the mobile home. Submit a copy of the contracts to be used.

(15) To obtain an Advisory Opinion pertaining to 24 CFR 1710.12, submit a copy of the contract of sale, the Intrastate Exemption Statement, the restrictive covenants, a statement of the status of mineral right ownership and the enabling document(s) of the Property Owners' Association, if any. If sales have been made since December 20, 1979, submit a list of such sales with the purchaser's name, address at the time of sale, date of sale and lot number(s).

(16) To obtain an Advisory Opinion pertaining to 24 CFR 1710.13, submit a copy of the contract of sale, plat, and MSA Exemption Statement. If sales have been made, submit a list of such sales with the purchaser's name, address at the time of sale, date of sale and lot number(s).

(17) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(1), submit a copy of the proposed promotional materials and the documents to be used in the sale.

(18) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(2), submit a copy of the lease and other documentation relevant to the lease transaction.

(19) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(3), submit information to substantiate the claim that the purchaser is in the land sales business.

(20) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(4), submit a map showing the lot on which the purchaser owns a residential, commercial or industrial building and the lot to be purchased.

(21) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(5), name the Government entity and submit a copy of the legal document by which the entity was created.

(22) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(6), state the circumstances under which the purchaser has lived on or will have lived on the lot for one year or more and submit a copy of the lease or other agreement entitling the other agreement entitling the purchaser to occupy the lot. State whether the purchaser is using the lot as his or her primary residence.

Part IX—No Action Letter—[24 CFR 1710.18]

The availability of expanded exemptions under the regulations has resulted in the exemption of most transactions which may previously have warranted the issuance of a No-Action Letter. Nevertheless, there may be instances when one or more sales or leases fall within the purview of the Act but do not qualify for an exemption although the circumstances of the sales or leases may be such that no affirmative action is needed to protect the public interest and prospective purchasers.

In such instances, a No-Action Letter may be requested. The request should include a thorough explanation of the proposed transaction(s) and the facts and supporting documentation necessary to demonstrate that no affirmative action is needed in the particular situation. If a request for a No-Action Letter is based upon a belief that the offering is ineligible for an exemption due to a minor technicality, demonstrate how other provisions of the particular exemption are met.

The issuance of a No-Action Letter will not affect any right or remedy that the purchaser may have under the Act, including the right to rescind a contract for a period of two years. A No-Action Letter simply signifies that HUD will not take any affirmative action to enforce the Act or require registration. However, the issuance of a No-Action Letter does not preclude any future agency action which may become necessary because of new information or a change in the circumstances.

HUD's No-Action Letters are based upon and limited to representations made by the developer. Therefore, if a favorable No-Action Letter is issued based upon incomplete, improper or incorrect representations, the Letter has no binding effect.

In no event will a No-Action Letter be issued if the sale or lease has already occurred.

There is no prescribed format for requesting a No-Action Letter. Therefore, the developer should describe the circumstances as fully as possible following a rule-of-thumb that too much information is better than too little. Upon review of the information submitted, additional clarification may be required to permit a final determination.

* * * * *

(Public Law 90-448, 82 Stat. 476, 590; 15 U.S.C. 1701)

Dated: September 7, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-26348 Filed 9-27-83; 8:45 am]

BILLING CODE 4210-27-M

federal register

Wednesday
September 28, 1983

Part VI

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 970]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 21, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft. rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS VOLUME 970

ISSUED SEPTEMBER 21, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** COLORADO OIL & GAS COMMISSION **********									
-AMERICAN PETROLEUM ENERGY CO INC			RECEIVED:	08/29/83		JA: CO			
8353832	83-300	0506706164		108-PB		ARGENTA UTE #2	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353831	83-301	0506706164		108-PB		ARGENTA UTE #2	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353823	83-298	0506706164		108-PB		ARGENTA UTE #2	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353822	83-299	0506706164		108-PB		ARGENTA UTE #2	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353773	83-312	0506706164		108-PB		ARGENTA UTE #2	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353817	83-364	0506706442		108		ARGENTA UTE #3	IGNACIO-BLANCO	30.0	NORTHWEST PIPELIN
8353826	83-295	0506706200		108-PB		ARGENTA UTE #6	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353825	83-296	0506706200		108-PB		ARGENTA UTE #6	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353824	83-297	0506706200		108-PB		ARGENTA UTE #6	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353828	83-293	0506706199		108-PB		ARGENTA UTE #7	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353827	83-294	0506706199		108-PB		ARGENTA UTE #7	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
-AMOCO PRODUCTION CO			RECEIVED:	08/29/83		JA: CO			
8353785	83-377	0512308347		108		BEN R HOUSTON GAS UNIT #1	WATTENBERG	19.9	PANHANDLE EASTERN
8353801	83-368	0512307277		108		BREWER POOLING UNIT #1	WATTENBERG	17.5	PANHANDLE EASTERN
8353780	83-371	0500107224		108		CHAMPLIN 75 AMOCO "H" #1	WATTENBERG	16.6	PANHANDLE EASTERN
8353784	83-376	0512307967		108		CHARLES R MILLIKEN UNIT #1	WATTENBERG	20.4	PANHANDLE EASTERN
8353781	83-372	0512308587		108		HARLAN GLANTZ #1	WATTENBERG	19.4	PANHANDLE EASTERN
8353782	83-375	0512309786		108		MABEL BRATTAIN UNIT #2	WATTENBERG	18.6	PANHANDLE EASTERN
8353803	83-373	0500107140		108		NORBERT SAMFORD GAS UNIT #1	WATTENBERG	15.4	PANHANDLE EASTERN
8353802	83-370	0512308105		108		UPRR 42 PAN AM "N" #1	WATTENBERG	19.3	PANHANDLE EASTERN
8353783	83-378	0512307263		108		UPRR 62 PAN AMERICAN B #1	WATTENBERG	19.0	PANHANDLE EASTERN
-BELLWETHER EXPLORATION CO			RECEIVED:	08/29/83		JA: CO			
8353819	83-281	0512310659		107-TF		DANIEL BUXMAN #1-26	BRACEWELL	56.9	NORTHERN NATURAL
8353857	83-279	0512310775		107-TF		FEIT BROTHERS #1-26	BRACEWELL	75.9	NORTHERN NATURAL
8353818	83-280	0512310660		107-TF		H D FEIT #1-26	BRACEWELL	73.0	NORTHERN NATURAL
8353860	83-276	0512310947		107-TF		INTERMILL #1-22	BRACEWELL	81.7	NORTHERN NATURAL
8353859	83-278	0512310862		107-TF		LOWELL ADAMS #1-23	BRACEWELL	68.6	NORTHERN NATURAL
8353861	83-277	0512310979		107-TF		MOBILE PREMIX #1-35	BRACEWELL	64.2	NORTHERN NATURAL
8353858	83-275	0512310805		107-TF		WEBER #1-26	BRACEWELL	96.3	NORTHERN NATURAL
-BP LTD 34			RECEIVED:	08/29/83		JA: CO			
8353836	83-217	0512310568		107-TF		JOHNSON #2	WATTENBERG	430.0	PANHANDLE EASTERN
8353837	83-216	0512310894		107-TF		JOHNSON #3-34	WATTENBERG SW SW T4N	632.8	PANHANDLE EASTERN
8353844	83-214	0512310895		107-TF		WEISS #2-34	WATTENBERG NE NW SEC	337.5	PANHANDLE EASTERN
8353835	83-213	0512310896		107-TF		WIESS #3-34	WATTENBERG SW NW SEC	682.8	PANHANDLE EASTERN
-CGT INC			RECEIVED:	08/29/83		JA: CO			
8353800	82-1304	0500107046		107-TF		BROSCH WEDOW 41-24	ZENITH	24.0	PANHANDLE EASTERN
8353798	82-1306	0500107899		107-TF		THOMPSON 43-13	ZENITH	24.0	PANHANDLE EASTERN
8353799	82-1305	0500107726		107-TF		THOMPSON 44-13	ZENITH	24.0	PANHANDLE EASTERN
-CRYSTAL OIL AND LAND COMPANY			RECEIVED:	08/29/83		JA: CO			
8353820	83-310	0512309292		108		CRYSTAL STATE 33-5	MONAHAN LAKES	12.8	COLORADO INTERSTA
8353821	83-311	0512309459		108		CRYSTAL STATE 41-17	MONAHAN LAKES	14.2	COLORADO INTERSTA
8353775	83-343	0512308431		108		CUYKENDALL "F" #1-F	ROGGEN	9.6	COLORADO INTERSTA
8353776	83-344	0512308460		108		CUYKENDALL "F" #3-F	ROGGEN	8.7	COLORADO INTERSTA
8353777	83-345	0512300000		108		SARGENT FARMS "A" #1-A	ROGGEN	11.3	COLORADO INTERSTA
8353779	83-347	0512308262		108		SARGENT FARMS "A" #1-D	ROGGEN	12.6	COLORADO INTERSTA

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8353778	83-346	0512308261		108		SARGENT FARMS "A" #2-A	ROGGEN	11.3	COLORADO INTERSTA
8353806	83-387	0512307891		108		SARGENT FARMS "B" #1-B	ROGGEN	8.9	COLORADO INTERSTA
8353787	83-388	0512308264		108		SARGENT FARMS "B" #2-C	ROGGEN	8.1	COLORADO INTERSTA
-DOME PETROLEUM CORP				RECEIVED:	08/29/83	JA: CO			
8353794	83-94	0506706439		107-TF		MCCULLOCH #1	IGNACIO BLANCO MESAVE	38.3	NORTHWESTERN PIPE
-EMPIRE OIL & GAS CO				RECEIVED:	08/29/83	JA: CO			
8353761	82-596	0500500000		102-4		HUME #1	WILDCAT	1825.0	SUN EXPLORATION &
8353767	82-595	0500500000		102-4		THORNTON #1	ELECTRA	1825.0	SUN EXPLORATION &
-ENERGY OIL INC				RECEIVED:	08/29/83	JA: CO			
8353855	83-306	0512307605		107-TF		BOSTROM #1	WATTENBERG	87.5	PANHANDLE EASTERN
8353850	83-292	0512310998		107-TF		FISHER #1	WATTENBERG	75.0	PANHANDLE EASTERN
8353838	83-268	0512310995		107-TF		FRANKLIN #-1	WATTENBERG	52.5	PANHANDLE EASTERN
8353852	83-304	0512310992		107-TF		GIBBS #28-1	WATTENBERG	175.0	PANHANDLE EASTERN
8353848	83-268	0512310996		107-TF		J-ALLES #1	WATTENBERG	57.0	PANHANDLE EASTERN
8353854	83-265	0512310994		107-TF		MARKUS #1	WATTENBERG	60.0	PANHANDLE EASTERN
8353851	83-307	0512310667		107-TF		POLLOCK-HADDIX #34-1	WATTENBERG	65.0	PANHANDLE EASTERN
8353770	83-99	0512310861		107-TF		PRATT #29-3	WATTENBURG	80.0	PANHANDLE EASTERN
8353853	83-305	0512310993		107-TF		REYNOLDS #1	WATTENBERG	250.0	PANHANDLE EASTERN
8353849	83-264	0512310998		107-TF		SAUER #1	WATTENBERG	55.5	PANHANDLE EASTERN
-FARM-RANCH EXPLORATION LTD				RECEIVED:	08/29/83	JA: CO			
8353762	83-98	0500107685		107-TF		MITCHEM #2-26	ZENITH	40.0	PANHANDLE EASTERN
8353763	83-97	0500107726		107-TF		MITCHEM #33-26	ZENITH	55.0	PANHANDLE EASTERN
8353764	83-96	0500107819		107-TF		MITCHEM #42-26	ZENITH	45.0	PANHANDLE EASTERN
-H L WILLETT				RECEIVED:	08/29/83	JA: CO			
8353840	83-187	0512310587		107-TF		LEFFLER #1	BRACEWELL	200.0	NORTHERN NATURAL
-J-W OPERATING COMPANY				RECEIVED:	08/29/83	JA: CO			
8353815	83-80	0512506855		103		M EDWARDS #1-31	BEECHER ISLAND	23.6	
-JOHN P LOCKRIDGE				RECEIVED:	08/29/83	JA: CO			
8353830	83-166	0512506285		108		DICKSON 1-22	BONNY FIELD	12.0	NORTHWEST CENTRAL
8353842	83-167	0512506287		108		GROSECLOSE 1-29	BONNY FIELD	7.0	NORTHWEST CENTRAL
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	08/29/83	JA: CO			
8353774	83-332	0508100000		108		POLE GULCH #6	POLE GULCH - LEWIS SA	18.9	MOUNTAIN FUEL SUP
-K N ENERGY INC				RECEIVED:	08/29/83	JA: CO			
8353845	83-119	0512506543		108		THOMAS 1-34X	REPUBLICAN	21.0	
-LOCKRIDGE & THOMPSON				RECEIVED:	08/29/83	JA: CO			
8353769	82-1264	0512109830		107-TF		ALLEN #2-15	DE NOVA	0.0	NATURAL GAS PIPEL
-MACEY & MERSHON OIL INC				RECEIVED:	08/29/83	JA: CO			
8353760	83-71	0512310582		103		MUSICK-MCCLINTOCK #6	HAMBERT	60.0	PANHANDLE EASTERN
8353807	83-72	0512310664		107-TF		QUALLS #1	WATTENBERG	80.0	PANHANDLE EASTERN
8353829	83-282	0512308489		108		SHELEY #1	WATTENBERG	15.0	COLORADO INTERSTA
-MARTIN EXPLORATION MGMT CORP				RECEIVED:	08/29/83	JA: CO			
8353810	83-234	0501306084		107-TF		ARAPAHOE #1-36 36-1N-69W (CNWNW)	WATTENBERG	19.1	PANHANDLE EASTERN
8353812	83-202	0501306145		103		DAWSON #3-15	WATTENBERG	30.0	PANHANDLE EASTERN
8353772	83-200	0501306145		107-TF		DAWSON #3-15	WATTENBERG	37.0	PANHANDLE EASTERN
8353811	83-261	0501306127		107-TF		ERIE #1-24 SENW 24-1N-69W	WATTENBERG	118.0	PANHANDLE EASTERN
8353813	82-1340	0506706609		103		HEIKKINEN #1-10	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353809	82-1339	0506706609		107-TF		HEIKKINEN #1-10	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8353797	82-1342	0500107918		107-TF		HOKR #20-1	WILDCAT	25.2	PANHANDLE EASTERN
8353816	83-287	0501306150		107-TF		MARY MILLER #1-35	WILDCAT	0.0	PANHANDLE EASTERN
8353758	83-201	0500108230		103		NAUMAN GREENLAUGH #1-23	BOULDER VALLEY	30.0	PANHANDLE EASTERN
8353789	83-286	0501306089		107-TF		YOUNG #1-23	WATTENBERG	119.5	PANHANDLE EASTERN
-MIDLANDS GAS CORPORATION				RECEIVED:	08/29/83	JA: CO			
8353846	83-225	0512506624		108		COOK 1-33	BEECHER ISLAND	8.2	KN ENERGY INC
8353847	82-1301	0512506448		108		STATE 1-36-447	LOVERLY	19.0	KN ENERGY INC
8353805	83-384	0512506429		108		STULP 1-11	SCHRADER	17.0	K N ENERGY INC
-NIELSON ENTERPRISES INC				RECEIVED:	08/29/83	JA: CO			
8353786	83-386	0512396230		108		VANTER GAS UNIT #1	WATTENBERG	21.0	PANHANDLE EASTERN
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	08/29/83	JA: CO			
8353804	83-381	0506706250		108		BONDAD 33-9 #19A	IGNACIO-BLANCO MESAVE	0.0	NORTHWEST PIPELIN
-OILFIELD SALVAGE & SERVICE				RECEIVED:	08/29/83	JA: CO			
8353771	83-43	0512310748		107-TF		MENDERSON #1	BANNER LAKES	35.0	DAMSON GAS PROCES
-OML				RECEIVED:	08/29/83	JA: CO			
8353833	83-256	0512310735		107-TF		BETZ #1	WATTENBERG	0.0	PANHANDLE EASTERN
8353834	83-257	0512310741		107-TF		LATHAM RESERVOIR #1	WATTENBERG	0.0	PANHANDLE EASTERN
8353839	83-255	0512310736		107-TF		MOSER #1	WATTENBERG	0.0	PANHANDLE EASTERN
-PETROQUEST INC				RECEIVED:	08/29/83	JA: CO			
8353843	83-290	0512310565		107-TF		STATE "A" #41-36	WATTENBERG	31.9	PANHANDLE EASTERN
-SAMSON OIL COMPANY				RECEIVED:	08/29/83	JA: CO			
8353796	83-42	0500906241		103		BURHENN 2-1	TOPEKA	0.0	COLORADO INTERSTA
-SANDLIN OIL CORP				RECEIVED:	08/29/83	JA: CO			
8353749	82-1018	0500108123		103		NELSON-TRUPP #1	CHIEFTAIN	70.0	PANHANDLE EASTERN
-TETON ENERGY CO INC				RECEIVED:	08/29/83	JA: CO			
8353768	82-1375	0507708422		107-TF		DAVIS-DOLLEY 36-1	PLATEAU	266.8	NORTHWEST PIPELIN
-TEXAS AMERICAN OIL CORP				RECEIVED:	08/29/83	JA: CO			
8353751	83-53	0500108204		103		ADAMS COUNTY #1	WATTENBERG	38.0	PANHANDLE EASTERN
8353752	83-52	0500108189		103		UNITED BANK OF DENVER	SPINDLE	39.0	PANHANDLE EASTERN
-TUDEX PETROLEUMS INC				RECEIVED:	08/29/83	JA: CO			
8353808	83-189	0500108175		107-TF		BARKER #12-9	SPINDLE	219.0	PANHANDLE EASTERN
8353766	83-48	0500108173		103		BELLINGER #12-7	SPINDLE	10.9	PANHANDLE EASTERN
8353750	83-44	0500108162		103		CROFF #12-5	SPINDLE	10.9	PANHANDLE EASTERN
8353755	83-50	0500107358		103		DARLOW #12-2	SPINDLE	10.9	PANHANDLE EASTERN
8353754	83-51	0500107938		103		MALLO #1	SPINDLE	10.9	PANHANDLE EASTERN
8353753	83-45	0500108192		103		PULIS #12-8	SPINDLE	9.1	PANHANDLE EASTERN
8353757	83-47	0500108163		103		REINHOLT #12-6	SPINDLE	14.6	PANHANDLE EASTERN
8353756	83-49	0500107939		103		SEVENS #1	SPINDLE	14.6	PANHANDLE EASTERN
-UNIOIL				RECEIVED:	08/29/83	JA: CO			
8353841	83-177	0512310854		107-TF		GREAT WESTERN SUGAR #6	WATTENBERG	42.0	PANHANDLE EASTERN
8353788	83-176	0512310781		107-TF		HANKINS #2	WATTENBERG	41.0	PANHANDLE EASTERN
8353856	83-182	0512310852		107-TF		RADIO TOWER #1	WATTENBERG	0.0	PANHANDLE EASTERN
-VESSELS OIL & GAS COMPANY				RECEIVED:	08/29/83	JA: CO			
8353793	83-209	0501306106		107-TF		BAILEY #12-2	WATTENBERG	219.0	PANHANDLE EASTERN
8353765	83-174	0512310691		103		GRENEMEYER "E" UNIT #1	WATTENBERG	285.0	PANHANDLE EASTERN
8353759	83-175	0500108214		103		NEWLANDER #1	SPINDLE	13.0	VESSELS GAS PROCE
8353791	83-188	0512310626		107-TF		NORRIS "C" UNIT #1	WATTENBERG	307.0	PANHANDLE EASTERN
8353790	83-208	0512310627		107-TF		NORRIS "C" UNIT #2	WATTENBERG	438.0	PANHANDLE EASTERN
8353792	83-220	0501306107		107-TF		SHAFFER-NEWMAN "H" UNIT #1	WATTENBERG	226.0	PANHANDLE EASTERN
-WILLIAM PERLMAN				RECEIVED:	08/29/83	JA: CO			
8353814	82-1307	0506706566		103		F M THIERRY #1-16U	IGNACIO BLANCO	0.0	EL PASO NATURAL G
8353795	82-1308	0506706566		107-TF		F M THIERRY #1-16U	IGNACIO BLANCO	0.0	EL PASO NATURAL G
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MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
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-NORTHERN MICHIGAN EXPLORATION CO				RECEIVED:	08/22/83	JA: MI			
8353643		2105535935		102-4		SALON ET AL NO 1-9C	EAST BAY "9	116.0	CONSUMERS POWER C

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
WEST VIRGINIA DEPARTMENT OF MINES									
-ALLEGHENY & WESTERN ENERGY CORP		RECEIVED:	08/29/83		JA: WV				
8353625		4709702486	103			A-1202	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8353626		4708703669	103			S A HAY #1	HARPER DISTRICT	36.0	ROARING FORK GAS
-ALLEGHENY LAND & MINERAL COMPANY		RECEIVED:	08/29/83		JA: WV				
8353627		4708302400	103			A-1127	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8353629		4700701810	103			A-1135	SALTLICK DISTRICT	0.0	CONSOLIDATED GAS
8353628		4701502064	103			A-1233	UNION DISTRICT	0.0	COLUMBIA GAS TRAN
-ALLEGHENY LAND & MINERAL COMPANY		RECEIVED:	08/30/83		JA: WV				
8353711		4708300628	103			A-1080	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8353712		4708300541	103			A-1094	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8353717		4704103240	103			A-1102	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8353713		4704103217	103			A-1107	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8353718		4708300689	103			A-1161	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8353716		4709702450	103			A-1186	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8353669		4708300278	108			A-826	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
-APPALACHIAN ENERGY INC		RECEIVED:	08/30/83		JA: WV				
8353699		4703322084	108			A BROOKE #2 AE-93	EAGLE DISTRICT	30.0	CONSOLIDATED GAS
8353677		4703321250	108			ALEX DUFF #1 AE-13	CLARK DISTRICT	30.0	CONSOLIDATED GAS
8353676		4703322132	108			B HELDRETH #1 AE-95	EAGLE DISTRICT	30.0	CARNEGIE NATURAL
8353693		4703322520	108			FRED BICE #1 AE-207	CLAY DISTRICT	30.0	CONSOLIDATED GAS
8353695		4704122553	108			GLEN ROHR #1 AE-43	HACKERS CREEK DISTRIC	30.0	COLUMBIA GAS TRAN
8353694		4704122551	108			GLEN ROHR #2 AE-44	HACKERS CREEK DISTRIC	30.0	COLUMBIA GAS TRAN
8353679		4703321242	108			J W SHEETS #1 AE-16	CLARK DISTRICT	30.0	CONSOLIDATED GAS
8353697		4703321689	108			JOHN COFFMAN #1 AE-11	EAGLE DISTRICT	30.0	CONSOLIDATED GAS
8353696		4703321241	108			JOHN COFFMAN #2 AE-12	EAGLE DISTRICT	30.0	CONSOLIDATED GAS
8353698		4703321714	108			LANDORA HARBERT #1 AE-19	EAGLE DISTRICT	30.0	CONSOLIDATED GAS
8353678		4703321249	108			T CARTER #1 AE-15	CLARK DISTRICT	30.0	CONSOLIDATED GAS
8353692		4703322218	108			VIEVA KELLS #1 AE-162	TENMILE DISTRICT	30.0	CONSOLIDATED GAS
-APPCO OIL & GAS CORP		RECEIVED:	08/30/83		JA: WV				
8353733		4708505396	103			LANGON #1	CLAY	0.0	CONSOLIDATED GAS
8353734		4710701191	103			W K WESTFALL	CLAY	1.0	GAS TRANSPORT
-ASHLAND EXPLORATION INC		RECEIVED:	08/29/83		JA: WV				
8353624		4700501366	103			COURTNEY CO #16 - 894111	SILER	7.0	COLUMBIA GAS TRAN
8353623		4700501367	103			COURTNEY CO #17 - 894121	SILER	13.0	COLUMBIA GAS TRAN
-BRUCE FOSTER		RECEIVED:	08/29/83		JA: WV				
8353638		4702103794	103			SUMMERS #1A	LITTLE KANAWHA RIVER	20.0	EQUITABLE GAS CO
-BRUCE FOSTER		RECEIVED:	08/30/83		JA: WV				
8353707		4702103794	107-DV			SUMMERS #1A	LITTLE KANAWHA RIVER	20.0	EQUITABLE GAS CO
-CLINT HURT & ASSOCIATES INC		RECEIVED:	08/30/83		JA: WV				
8353745		4708703483	107-DV			GRANT #1	SPENCER	30.0	COLUMBIA GAS TRAN
8353748		4707301512	107-DV			HALL #1	ST MARYS	3.6	COLUMBIA GAS TRAN
8353730		4707301398	103			NICHOLS #1	MCKIM	24.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION		RECEIVED:	08/30/83		JA: WV				
8353720		4708505528	102-2			FRANKLIN D SPEARS 12756	GRANT	3.0	GENERAL SYSTEM PU
-CONTINENTAL PETROLEUM CO		RECEIVED:	08/30/83		JA: WV				
8353735		4702103927	103			KEITH #1-A	GLENVILLE NORTH	30.0	COLUMBIA GAS TRAN
8353736		4702103928	103			KEITH #2-A	GLENVILLE NORTH	30.0	COLUMBIA GAS TRAN
8353737		4702103930	103			KEITH #4-A	GLENVILLE NORTH	30.0	COLUMBIA GAS TRAN
-D C MALCOLM INC		RECEIVED:	08/29/83		JA: WV				
8353618		4701100706	107-DV			WILES #1	EAST LYNN-CREET	30.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC		RECEIVED:	08/29/83		JA: WV				
8353622		4703322597	103			D LOUIE #1 KR-30	CLAY DISTRICT	30.0	CONSOLIDATED GAS
8353621		4703322599	103			D LOUIE #3 KR-31	CLAY DISTRICT	30.0	CONSOLIDATED GAS
8353620		4703322609	103			D LOUIE #5 KR-32	CLAY DISTRICT	30.0	CONSOLIDATED GAS
-ENERGY UNLIMITED INC		RECEIVED:	08/30/83		JA: WV				
8353700		4707300896	107-DV			J FULMER #1	JEFFERSON DISTRICT	0.0	CONSOLIDATED GAS
-F F MCINTOSH ST ESTATE		RECEIVED:	08/30/83		JA: WV				
8353674		4701303061	108			C C STARCHER #1	LEE	1.0	CONSOLIDATED GAS
8353683		4701303063	108			C E WHYTSELL #1	LEE	3.0	CONSOLIDATED GAS
8353686		4701303056	108			G G KELLEY	LEE	0.0	CONSOLIDATED GAS
8353685		4701303050	108			JOHN MORGAN #1	LEE	3.0	CONSOLIDATED GAS
8353673		4701303060	108			ROY MORGAN #1	LEE	7.0	CONSOLIDATED GAS
8353675		4701303062	108			S P HICKMAN #1	LEE	0.0	CONSOLIDATED GAS
8353667		4701303059	108			STURM HEIRS #1	LEE	5.0	CONSOLIDATED GAS
8353682		4701303065	108			VERE HAYMAKER #2	LEE	0.0	CONSOLIDATED GAS
8353681		4710303064	108			VERY HAYMAKER #1	LEE	3.0	CONSOLIDATED GAS
8353672		4701303057	108			W R STARCHER #1	LEE	2.7	CONSOLIDATED GAS
-FORMULA OIL & GAS INC		RECEIVED:	08/30/83		JA: WV				
8353746		4708505803	107-DV			BERDINE #2	CAINS RUN	507.0	COLUMBIA GAS TRAN
-GEOPHYSICAL PROPERTIES INC		RECEIVED:	08/29/83		JA: WV				
8353635		4707301421	103			RODNEY FITZWATER #1	MCKIM DISTRICT	20.0	HAUGHT INC
-GEORGE JACKSON		RECEIVED:	08/30/83		JA: WV				
8353710		4703302810	103			BARBARA J ANDERSON #1	CLAY DISTRICT	20.0	CONSOLIDATED GAS
-GRIMM RAY		RECEIVED:	08/30/83		JA: WV				
8353680		4701301681	108			O R READING #1	LEE	1.8	CONSOLIDATED GAS
-H D WELLS OIL & GAS EXPL & DEVEL IN		RECEIVED:	08/29/83		JA: WV				
8353636		4710701225	103			D J FLINN #ONE	POND CREEK	18.0	GAS TRANSPORT INC
-J C BAKER		RECEIVED:	08/30/83		JA: WV				
8353709		4700761749	103			H W ROBINSON	SALT LICK	0.2	CONSOLIDATED GAS
-JAMES F SCOTT		RECEIVED:	08/30/83		JA: WV				
8353744		4701703145	107-DV			COFFMAN HEIRS #1 S-429	MCCLELLAN	0.3	COLUMBIA GAS TRAN
-L & B OIL CO INC		RECEIVED:	08/29/83		JA: WV				
8353637		4707301502	103			MATHENY #1		25.0	CONSOLIDATED GAS
-L & M PETROLEUM INC		RECEIVED:	08/30/83		JA: WV				
8353706		4707321448	107-DV			CARPENTER/HART #1	LINCOLN	10.0	CONSOLIDATED GAS
8353705		4709520823	107-DV			LLOYD CROSS #1	LINCOLN	10.0	CONSOLIDATED GAS
-M & J JOINT VENTURE		RECEIVED:	08/30/83		JA: WV				
8353671		4701301582	108			HARDMAN MCDONALD #1 #2 WELL RECORD	SHERMAN	1.0	CONSOLIDATED GAS
8353670		4701301639	108			HARDMAN-MCDONALD #2 #3 WELL RECORD	SHERMAN	0.0	CONSOLIDATED GAS
-MCINTOSH AND GRIMM		RECEIVED:	08/30/83		JA: WV				
8353687		4701303066	108			A HARDMAN #1	LEE	2.5	CONSOLIDATED GAS
8353684		4701303067	108			A HARDMAN #2	LEE	2.5	CONSOLIDATED GAS
8353690		4701300040	108			JARVIS & ULDRICH #1	LEE	1.5	CONSOLIDATED GAS
8353688		4701303054	108			JOHN SLIDER #5	LEE	5.5	CONSOLIDATED GAS
8353689		4701303051	108			W H SLIDER #4	LEE	0.3	CONSOLIDATED GAS
-NRM PETROLEUM CORPORATION		RECEIVED:	08/30/83		JA: WV				
8353714		4709702457	103			LOUDIN A#1	CAVE RUN	0.0	COLUMBIA GAS TRAN
-PEAKE OPERATING CO		RECEIVED:	08/30/83		JA: WV				
8353719		4710900888	103			WELCHLANDS #15-AW	N A (SLAB FORK DISTRI	5.0	CONSOLIDATED GAS
-RAMCO OIL & GAS CORP		RECEIVED:	08/30/83		JA: WV				
8353666		4705900943	108			U S STEEL #23	STAFFORD	32.0	CONSOLIDATED GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ROCKWELL PETROLEUM CO				RECEIVED:	08/30/83	JA: WV			
8353691		4702101367		108		G W MILLER #2	BULL FORK OF TANNER C	1.0	CONSOLIDATED GAS
-ROCKWELL PETROLEUM CORP				RECEIVED:	08/30/83	JA: WV			
8353668		4702101366		108		G W MILLER #1	BULL FORK OF TANNER C	1.0	CONSOLIDATED GAS
-SANTA FE DRILLING CORP				RECEIVED:	08/30/83	JA: WV			
8353731		4704103067		103		GLANCY #2	COURT HOUSE DISTRICT	0.0	CONSOLIDATED GAS
-SPARTAN GAS COMPANY				RECEIVED:	08/30/83	JA: WV			
8353732		4709901791		103		COLUMBIA GAS TRANS CORP 2-S-285	LINCOLN	11.0	COLUMBIA GAS TRAN
8353743		4710900860		107-TF		Y & O COAL COMPANY 82-S-273	SLAB FORK	18.0	COLUMBIA GAS TRAN
-ST MARYS EASTERN ENERGY INC				RECEIVED:	08/30/83	JA: WV			
8353747		4707301509		107-DV		SPINDLETOP-WETZ	MC KIM	20.0	COLUMBIA GAS TRAN
-STERLING DRILLING AND PROD CO INC				RECEIVED:	08/29/83	JA: WV			
8353619		4701303428		107-DV		MONROE #669	SHERIDAN	5.6	
-STERLING DRILLING AND PROD CO INC				RECEIVED:	08/30/83	JA: WV			
8353650		4708501398		107-DV		APCO #675	SCOTT DISTRICT	3.1	
8353647		4708501386		107-DV		APPALACHIAN POWER #665	SCOTT DISTRICT	2.8	
8353651		4708501399		107-DV		APPALACHIAN POWER CO #671-REV	SCOTT DISTRICT	3.5	
8353665		4701303386		107-DV		BLOSSER #639	LEE DISTRICT	9.1	
8353646		4708703535		107-DV		BOGGS & MARKS #609	WALTON DISTRICT	5.4	
8353648		4708703383		107-DV		DODD #431	WALTON DISTRICT	3.7	
8353649		4708703665		107-DV		HUFFMAN #686	WALTON DISTRICT	9.3	
8353644		4708703489		107-DV		LOONEY #536	WALTON DISTRICT	3.3	
8353654		4708703496		107-DV		LOWE 574	SPENCER DISTRICT	5.3	
8353661		4701303409		107-DV		MONROE #660	SHERIDAN DISTRICT	8.0	
8353659		4710500958		107-DV		MONROE #661	BURNING SPRINGS	502.0	
8353658		4708703523		107-DV		NICHOLS #619	SPENCER DISTRICT	3.0	
8353653		4708703686		107-DV		RYAN #688	HARPER DISTRICT	4.7	
8353655		4708703687		107-DV		RYAN 689	HARPER DISTRICT	4.0	
8353663		4708703509		107-DV		SPEARS #591	SMITHFIELD DISTRICT	2.5	
8353660		4701303371		107-DV		STARCHER #506	LEE	3.8	
8353664		4701300337		107-DV		STARCHER #632	LEE DISTRICT	3.8	
8353657		4701303485		107-DV		STARCHER #638	LEE DISTRICT	5.5	
8353662		4701303381		107-DV		VICTORE #634	LEE DISTRICT	3.7	
8353652		4701303484		107-DV		WHIPKEY #649	LEE DISTRICT	6.7	
8353656		4708703503		107-DV		WHITED #582	WALTON DISTRICT	4.0	
8353645		4708703507		107-DV		WHITED #586	WALTON DISTRICT	1.3	
-STONESTREET LANDS CO				RECEIVED:	08/29/83	JA: WV			
8353631		4701303442		103		KING #2-S-340	ELMIRA	15.0	COLUMBIA GAS TRAN
8353630		4701303444		103		KING #4-S-342	ELMIRA	23.0	COLUMBIA GAS TRAN
8353634		4701303438		103		LAUGHLIN #2-S-337	ELMIRA	6.0	COLUMBIA GAS TRAN
8353633		4701303439		103		LAUGHLIN #3-S-338	ELMIRA	5.0	COLUMBIA GAS TRAN
8353632		4701303440		103		LAUGHLIN #4-S-339	ELMIRA	5.0	COLUMBIA GAS TRAN
-STONEWALL GAS CO				RECEIVED:	08/30/83	JA: WV			
8353715		4708505654		103		FRANK CRISS #2	GRANT DISTRICT	250.0	CONSOLIDATED GAS
-UNION DRILLING INC				RECEIVED:	08/30/83	JA: WV			
8353722		4709702449		103		AMY TENNEY #1 1799	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353721		4709702445		103		BOYLES-WOODY #1 1746	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353738		4700101735		103		D H PATSEY ET AL #2 1497	PLEASANT DISTRICT	0.0	CONSOLIDATED GAS
8353739		4708300538		103		HARRY MCMULLAN #17B 1714	ROARING CREEK DISTRIC	0.0	TENNESSEE GAS PIP
8353740		4708300539		103		HARRY MCMULLAN #20B 1717	ROARING CREEK DISTRIC	0.0	TENNESSEE GAS PIP
8353741		4708300638		103		HARRY MCMULLAN #22B 1772	ROARING CREEK DISTRIC	0.0	TENNESSEE GAS PIP
8353726		4709702460		103		MARY G WARD #1 1800	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8353727		4709702461		103		MARY WARD #1 1801	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8353742		4709702443		103		RICHARD ANTHONY #1 1756	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353724		4709702456		103		ROSALEE OLSEN #1 1757	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353728		4709702474		103		RUTH B ALLEMAN #2 1609	MEADE DISTRICT	0.0	COLUMBIA GAS TRAN
8353723		4709702453		103		THOMAS L STOCKERT JR #1 1600	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353729		4709702483		103		UDI-KUHNS #1 1806	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
8353725		4709702458		103		UDI-SAMPLES #1 1660	BANKS DISTRICT	0.0	COLUMBIA GAS TRAN
-UNITED PETRO LTD				RECEIVED:	08/29/83	JA: WV			
8353641		4709702418		103		MAXINE FIDLER #1 - UPL	ABBOTT-FRENCH CREEK C	10.0	
8353642		4709702417		103		MAXINE FIDLER #2 - UPL	ABBOTT-FRENCH CREEK C	7.0	
8353640		4709702420		103		RALPH HARPER #1 -A- UPL	ABBOTT-FRENCH CREEK C	10.0	
8353639		4709702421		103		RALPH HARPER #1-UPL	ABBOTT-FRENCH CREEK C	10.0	
-UNITED PETRO LTD				RECEIVED:	08/30/83	JA: WV			
8353708		4701303393		103		MAUDE BAILEY #4	MINNORA GAS FIELD	18.0	CONSOLIDATED GAS
-WAYMAN W BUCHANAN				RECEIVED:	08/30/83	JA: WV			
8353701		4703501722		107-DV		B CASTO #A-2	MIDWAY - EXTRA	0.0	CABOT CORP
8353704		4708505726		107-DV		DILLY #1	GRANT	0.0	CONSOLIDATED GAS
8353702		4703501720		107-DV		E E CASTO #A-2	MIDWAY-EXTRA	0.0	CABOT CORP
8353703		4703501669		107-DV		NELSON #3	MIDWAY-EXTRA	0.0	CABOT CORP
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO									
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-KOCH INDUSTRIES INC				RECEIVED:	08/29/83	JA: CO 1			
8353608 CD 0101-83		0507708486		103	107-TF	HORSESHOE CANYON #4-21 (CORCORON)	ROBERTS CANYON-SHIRE	123.0	NORTHWEST PIPELIN
8353607 CD -0100-83		0507708486		103	107-TF	HORSESHOE CANYON #4-21 (DAKOTA)	ROBERTS CANYON-SHIRE	200.0	NORTHWEST PIPELIN
-MOBIL OIL CORP				RECEIVED:	08/29/83	JA: CO 1			
8353610 CD -0093-83		0506706227		102-2		UTE INDIAN 1-11	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN
8353609 CD-0092-83		0506706227		102-2		UTE INDIAN 1-11	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	08/29/83	JA: CO 1			
8353611 CD 0082-83		0506705062		108		NORTHWEST CEDAR HILLS 32-10 #4	IGNACIO BLANCO MESAVE	0.0	NORTHWEST PIPELIN
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
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-CHEVRON U S A INC				RECEIVED:	08/29/83	JA: LA 3			
8353549 G2-3219		1772540197		102-5		OCS-G-1633 #7	MAIN PASS	1095.0	SOUTHERN NATURAL
8353550 G2-3220		1772540203		102-5		OCS-G-1633 #8	MAIN PASS	1460.0	SOUTHERN NATURAL
-CONOCO INC				RECEIVED:	08/30/83	JA: LA 3			
8353617 G2-2814		1770840401		102-5		SOUTH MARSH ISLAND 113 A-1 (SEL)	SOUTH MARSH ISLAND	1800.0	SEA ROBIN PIPELIN
-EXXON CORPORATION				RECEIVED:	08/29/83	JA: LA 3			
8353564 G3-3776		1770640521		102-1		OCS-G 4261 #A-3	VERMILION	100.0	TRANSCONTINENTAL
-EXXON CORPORATION				RECEIVED:	08/30/83	JA: LA 3			
8353616 G3-3777		1770640525		102-1		OCS-G 4261 #A-2	VERMILION	100.0	TRANSCONTINENTAL
-GULF OIL CORPORATION				RECEIVED:	08/29/83	JA: LA 3			
8353552 G3-3780		1770440568		102-1		E CAMERON 338 FEILD OCS-G 3540 #B-8	EAST CAMERON	67.0	TEXAS EASTERN TRA
8353558 G3-3764		1770540558		107-DP		VERMILION BLOCK 39 OCS-G 3543 #5	VERMILION	9125.0	TEXAS EASTERN TRA
8353559 G3-3765		1770540558		102-1		VERMILION BLOCK 39 OCS-G 3543 #5	VERMILION	9125.0	TEXAS EASTERN TRA
8353543 G2-3275		1770040529		102-5		W CAMERON BLOCK 198 OCS-G 3265 #A-3	WEST CAMERON	4500.0	TEXAS EASTERN TRA
8353562 G3-3515		1770040361		102-5		WEST CAMERON 198 OCS-G 3265 #B-2	WEST CAMERON	467.0	TEXAS EASTERN TRA
-MESA PETROLEUM CO				RECEIVED:	08/29/83	JA: LA 3			
8353553 G3-3783		1770640516		102-1		VERMILION 381 #A-6	VERMILION 381	1200.0	UNITED GAS PIPE L
-SONAT EXPLORATION COMPANY				RECEIVED:	08/29/83	JA: LA 3			
8353538 G3-3276		1771140439		102-5		SHIP SHOAL 222 D-6	SHIP SHOAL	1825.0	SEA ROBIN PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8353534	G3-3277	1771140649		102-5		SHIP SHOAL 222 D-8 (ST)
-SUPERIOR OIL CO				RECEIVED:	08/29/83	JA: LA 3
8353551	G3-3786	1770840527		107-DP		OCS 0247 #16
8353566	G3-3774	1772540297		102-1		OCS-G-4910 A-1
8353565	G3-3775	1772540316		102-1		OCS-G-4910 A-2
-TENNECO OIL COMPANY				RECEIVED:	08/29/83	JA: LA 3
8353570	G3-3700	1771140493		102-1		SHIP SHOAL 178 #4
8353555	G3-3688	1771140493		102-1		SHIP SHOAL 178 #4D
8353541	G3-3697	1771140662		102-1		SHIP SHOAL 181 #B-10
8353536	G3-3694	1771140621		102-1		SHIP SHOAL 181 #B-7
8353537	G3-3696	1771140640		102-1		SHIP SHOAL 181 #B-9
8353567	G3-3771	1770540445		102-1		VERMILION 75 #A-1
8353568	G3-3635	1770540546		107-DP		VERMILION 75 #3
-TEXOMA PRODUCTION CO				RECEIVED:	08/29/83	JA: LA 3
8353535	G2-3311	1771040842		102-5		BLOCK 321 WELL #A-1 (ALT)
-UNION OIL COMPANY OF CALIF				RECEIVED:	08/29/83	JA: LA 3
8353548	G2-3094	1771240276		102-5		OCS-G 1031 #E-8
-AMINOIL USA INC				RECEIVED:	08/29/83	JA: TX 3
8353569	G3-3558	4271140246		108		OCS-G-2421 WELL A-15/15D
-PENNZOIL COMPANY				RECEIVED:	08/29/83	JA: TX 3
8353547	G2-3054	4270940435		102-5		HIGH ISLAND A-563 #B-12
8353561	G2-3059	4270940405		102-5		HIGH ISLAND A-563 #B-13C
8353545	G2-3061	4270940488		102-5		HIGH ISLAND A-563 #B-15
8353554	G2-3065	4270940564		102-5		HIGH ISLAND A-563 #B-23
8353556	G2-3066	4270940566		102-5		HIGH ISLAND A-563 #B-24
8353557	G2-3068	4270940668		102-5		HIGH ISLAND A-563 #B-26
8353549	G2-3069	4270940681		102-5		HIGH ISLAND A-563 #B-27
8353542	G2-3047	4270940371		102-5		HIGH ISLAND A-563 #B-5
8353546	G2-3048	4270940371		102-5		HIGH ISLAND A-563 #B-5A
8353539	G2-3060	4270940405		102-5		HIGH ISLAND A-563 NO B-13D
8353544	G2-3062	4270940531		102-5		HIGH ISLAND A-563 NO B-20
8353560	G2-3063	4270940539		102-5		HIGH ISLAND A-564 #B-21
-PENNZOIL COMPANY				RECEIVED:	08/30/83	JA: TX 3
8353612	G2-3044	4270940299		102-5		HIGH ISLAND A-563 #B-1
8353613	G2-3064	4270940350		102-5		HIGH ISLAND A-563 #B-22
8353614	G2-3067	4270940566		102-5		HIGH ISLAND A-563 #B-24A
8353615	G2-3070	4270940681		102-5		HIGH ISLAND A-563 #B-27A
-TENNECO OIL COMPANY				RECEIVED:	08/29/83	JA: TX 3
8353563	G3-3769	4271540015		102-1		SABINE PASS 18 #B-5

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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, CASPER,WY

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-FALCON-COLORADO EXPLORATION INC				RECEIVED:	08/29/83	JA: MT 5
8353598	M 618-2	2510521184		103		MILK RIVER 1-33
-GEORESOURCES INC				RECEIVED:	08/29/83	JA: MT 5
8353605	M 547-2	2501121262		108		FEDERAL 1-13
-MIDLANDS GAS CORPORATION				RECEIVED:	08/29/83	JA: MT 5
8353574	M 508-2E	2510521162		108-ER		FEDERAL 1 0707
8353573	M 509-2	2507121247		108		FEDERAL 1 1141
8353581	M 534-2	2507121196		108		FEDERAL 1 2721
8353604	M 566-2	2507121495		108		FEDERAL 2 0121
8353593	M 628-2	2507121834		102-2		FEDERAL 2 0732
8353592	M 629-2	2507121824		102-2		FEDERAL 2 1341
8353583	M 532-2	2507121810		103		FEDERAL 2 1421
8353602	M 579-2	2507121808		103		FEDERAL 2 1512
8353603	M 580-2	2507121809		103		FEDERAL 2 2212
8353582	M 533-2	2507121807		103		FEDERAL 2 2321
8353597	M 624-2	2507121825		102-2		FEDERAL 2 2341
8353596	M 625-2	2507121823		102-2		FEDERAL 2 2541
8353595	M 626-2	2507121831		102-2		FEDERAL 2 2551
8353594	M 627-2	2507121840		102-2		FEDERAL 2 3042
8353572	M 510-2	2507121582		108		SOC ET AL FEDERAL 1-26 2661
-APACHE CORPORATION				RECEIVED:	08/29/83	JA: ND 5
8353588	ND 519-2	3300700521		102-2		FEDERAL 1-22
8353571	ND 516-2	3300700603		102-2		FEDERAL 14-2
8353590	ND 517-2	3300700637		102-2		FEDERAL 15-1
8353589	ND 518-2	3300700750		102-2		FEDERAL 15-2
8353587	ND 520-2	3300700604		102-2		FEDERAL 2-23
-GETTY OIL COMPANY				RECEIVED:	08/29/83	JA: ND 5
8353600	ND 605-2	3305301439		102-2		BOB CREEK #13-8
-GULF OIL CORPORATION				RECEIVED:	08/29/83	JA: ND 5
8353585	ND 522-2	3302500215		102-2		BOB CREEK FEDERAL 4-19-1D
8353586	ND 521-2	3305301417		102-2		ROUGH RIDER FEDERAL 1-21-3D
-JERRY CHAMBERS EXPLORATION CO				RECEIVED:	08/29/83	JA: ND 5
8353584	ND 525-2	3300700736		102-2		BUCKHORN FEDERAL 23-3
-PATRICK PETROLEUM CORP (MI)				RECEIVED:	08/29/83	JA: ND 5
8353606	ND 544-2	3300700499		102-2		FEDERAL #3-26
8353599	ND 613-2	3305301356		102-3		LIND FEDERAL 1-12
-SHELL OIL CO				RECEIVED:	08/29/83	JA: ND 5
8353591	ND 636-2	3301100383		103		USA 33X-3A-5R
-SINCLAIR OIL CORPORATION				RECEIVED:	08/29/83	JA: ND 5
8353577	ND 541-2	3305301379		102-2		FEDERAL #4-18 RR
8353576	ND 542-2	3305301373		102-2		FEDERAL #5-18 RR
-TENNECO OIL COMPANY				RECEIVED:	08/29/83	JA: ND 5
8353578	ND 537-2	3300700794		102-2		CHILDS USA 3-20
8353575	ND 543-2	3300700771		102-2		COULAM USA 1-20
8353580	ND 535-2	3300700856		102-2		MARTIN USA 3-17
8353579	ND 536-2	3300700823		102-2		STUART USA 1-30R
-PATRICK PETROLEUM CORP (MI)				RECEIVED:	08/29/83	JA: SD 5
8353601	SD 583-2	4006320292		102-2		STATE 1-25

FIELD NAME	PROD	PURCHASER
SHIP SHOAL	1825.0	SEA ROBIN PIPELIN
WEST CAMERON	2000.0	TEXAS EASTERN TRA
MAIN PASS	1500.0	
MAIN PASS	1500.0	
SHIP SHOAL	107.0	
SHIP SHOAL	71.0	
SHIP SHOAL	107.0	
SHIP SHOAL	60.0	
SHIP SHOAL	107.0	
VERMILION	1825.0	TEXAS EASTERN TRA
VERMILION	3600.0	TEXAS EASTERN TRA
EUGENE ISLAND	1460.0	NATURAL GAS PIPEL
SHIP SHOAL BLOCK	100.0	TRANSCONTINENTAL
HIGH ISLAND	8.0	NATURAL GAS PIPEL
HIGH ISLAND AREA SOUT	26.1	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	3267.2	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	3148.1	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	513.4	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	4667.4	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	27.2	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	140.0	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	3093.3	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	1697.3	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	3934.5	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	855.8	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	5134.1	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	201.0	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	541.7	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	27.2	UNITED GAS PIPE L
HIGH ISLAND AREA SOUT	203.7	UNITED GAS PIPE L
SABINE PASS	1460.8	TENNESSEE GAS PIP
BOWDOIN DOME	8.5	MONTANA-DAKOTA UT
HAMMOND GAS FIELD	12.8	MONTANA DAKOTA UT
WILDCAT	10.8	KN ENERGY INC
WILDCAT	22.8	KN ENERGY INC
BOWDOIN	0.0	KN ENERGY INC
BOWDOIN	22.0	KN ENERGY INC
BOWDOIN	34.8	KN ENERGY INC
BOWDOIN	51.8	KN ENERGY INC
BOWDOIN	49.8	KN ENERGY INC
BOWDOIN	35.8	KN ENERGY INC
BOWDOIN	36.8	KN ENERGY INC
BOWDOIN	38.8	KN ENERGY INC
BOWDOIN	30.8	KN ENERGY INC
BOWDOIN	82.8	KN ENERGY INC
BOWDOIN	72.8	KN ENERGY INC
BOWDOIN	68.8	KN ENERGY INC
NORTH BOWDOIN	22.8	KN ENERGY INC
BUCKHORN	8.4	KOCH HYDROCARBON
BUCKHORN	48.2	KOCH HYDROCARBON
BUCKHORN	31.7	KOCH HYDROCARBON
BUCKHORN	27.6	KOCH HYDROCARBON
BUCKHORN	12.2	KOCH HYDROCARBON
LONE BUTTE	50.0	KOCH HYDROCARBON
LONE BUTTE	72.0	
UNDESIGNATED	365.0	
BUCKHORN	1.0	KOCH HYDROCARBON
TREE TOP	16.0	KOCH HYDROCARBON
LITTLE KNIFE FIELD	700.0	MONTANA-DAKOTA UT
CEDAR CREEK	8.0	
ROUGH RIDER	50.0	KOCH HYDROCARBON
ROUGH RIDER	50.0	KOCH HYDROCARBON
ELKHORN RANCH	525.0	MONTANA-DAKOTA UT
MORGAN DRAW	3.6	MONTANA-DAKOTA UT
DEVIL'S PASS	450.0	MONTANA DAKOTA UT
BIG STICK	322.0	WESTERN GAS PROCE
WEST SHORT PINE HILLS	20.0	MONTANA DAKOTA UT

[FR Doc. 83-26436 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 971]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 21, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5185 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enchancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS VOLUME 971

ISSUED SEPTEMBER 21, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KENTUCKY DEPARTMENT OF MINES & MINERALS									
-SULLIVAN CHESTER				RECEIVED:	08/31/83	JA: KY			
8354019	505989	1617700000		102-4		MCPHERSON & MCINTOSH #1	ROSEWOOD FIELD	90.0	TEXAS GAS TRANSMI
8354020	505990	1617700000		102-4		OTHA MCPHERSON #1	ROSEWOOD FIELD	90.0	TEXAS GAS TRANSMI
8354017	505987	1617700000		102-4		WILLIAM MCINTOSH #1	ROSEWOOD FIELD	90.0	TEXAS GAS TRANSMI
8354018	505988	1617700000		102-4		WILLIAM MCINTOSH #3	ROSEWOOD FIELD	90.0	TEXAS GAS TRANSMI
MISSISSIPPI OIL & GAS BOARD									
-FLORIDA GAS EXPLORATION COMPANY				RECEIVED:	08/30/83	JA: MS			
8353862	46-83-377	2306520047		107-DP		BARNES #2	BASSFIELD	365.0	FLORIDA GAS TRANS
8353864		2306520089		107-DP		UNIT 6-6 #1	OAKVALE	700.0	TRANSCONTINENTAL
-PENNZOIL PRODUCING COMPANY				RECEIVED:	08/30/83	JA: MS			
8353863	44-83-119	2314700000		108		LEE UNIT #3	DEXTER	16.5	SOUTHERN NATURAL
-PRUET PRODUCTION CO				RECEIVED:	08/30/83	JA: MS			
8353867	28-83-413	2308720079		102-2	103	ALDRIDGE 17-13 #1	MAPLE BRANCH	365.0	TENNESSEE GAS PIP
8353865	30-83-576	2309520378		102-4	103	C A THOMPSON ESTATE 7-9 WELL #1	RIVERLINE	360.0	
8353868	26-83-413	2308720082		102-2	103	CONNER-MYERS 20-3 #1	SOUTH MAPLE BRANCH	180.0	TENNESSEE GAS PIP
8353866	27-83-413	2308720086		102-2	103	EGGER 20-11 #1	MAPLE BRANCH	180.0	TENNESSEE GAS PIP
NORTH DAKOTA INDUSTRIAL COMMISSION									
-TEXACO INC				RECEIVED:	08/12/83	JA: ND			
8354021	801	3305301591		103		BLUE BUTTES MADISON UNIT H431X	BLUE BUTTES	26.4	AMINOIL USA INC
8354022	800	3305301591		103		BLUE BUTTES MADISON UNIT L405	BLUE BUTTES	47.3	AMINOIL USA INC
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED:	08/31/83	JA: NM			
8353999		3002528083		103		JO #1	EUMONT GAS	96.0	EL PASO NATURAL G
-AMERADA HESS CORPORATION				RECEIVED:	08/31/83	JA: NM			
8354003		3002500000		108		W A WEIR #3	EUNICE-MONUMENT	19.5	NORTHERN NATURAL
-C & E OPERATORS INC				RECEIVED:	08/31/83	JA: NM			
8354012		3004523679		103		FEE #3	BLANCO-MESAVERDE	120.0	EL PASO NATURAL G
8354011		3004523679		103		FEE #3	AZTEC-PICTURED CLIFFS	28.0	EL PASO NATURAL G
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	08/31/83	JA: NM			
8354006		3001521399		103		TRACY-C #1	UND BURTON FLAT MORRO	250.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	08/31/83	JA: NM			
8354014		3004524413		107-TF		ALLISON UNIT #5A DK	BASIN DAKOTA	40.0	EL PASO NATURAL G
8354015		3004506485		108-PB		TURNER B COM B #7	FULCHER KUTZ P C	0.0	EL PASO NATURAL G
-EXXON CORPORATION				RECEIVED:	08/31/83	JA: NM			
8354005		3002528017		103		NEW MEXICO DD STATE #5	SCHARB (BONE SPRING)	4.0	WARREN PETROLEUM
-GETTY OIL COMPANY				RECEIVED:	08/31/83	JA: NM			
8354013		3002520137		108		STATE "BB" #2	JUSTIS BLINEBRY - TUB	12.4	EL PASO NATURAL G
-MARATHON OIL COMPANY				RECEIVED:	08/31/83	JA: NM			
8354004		3002500000		108		L G WARLICK -C- #6	DRINKARD	8.5	GETTY OIL CO
-MERRION OIL & GAS CORP				RECEIVED:	08/31/83	JA: NM			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8354002		3003922168		108		EAST LINDRITH #2	BLANCO PICTURED CLIFF	7.0	NORTHWEST PIPELIN
8354000		3004525560		103		JALAPENO #1	DUFERS POINT GALLUP D	14.6	NORTHWEST PIPELIN
8354010		3003923112		103		RITA COM #3	COUNSELORS GALLUP	64.6	NORTHWEST PIPELIN
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	08/31/83	JA: NM			
8354007		3000520897		103		C L O'BRIEN #2	LIGHTCAP (MONTOYA)	34.0	
8354008		3002528134		103		STATE L #5	VACUUM ABO NORTH	24.8	EL PASO NATURAL G
-SUPERIOR OIL CO				RECEIVED:	08/31/83	JA: NM			
8354001		3002526958		102-4		SIMS #1	SOUTH BELL LAKE (MORR	0.0	TRANSWESTERN PIPE
-TENNECO OIL COMPANY				RECEIVED:	08/31/83	JA: NM			
8354016		3004511775		108-PB		STATE COM LL-12	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	08/31/83	JA: NM			
8354009		3002526053		103		MARK #12	WANTZ ABO	0.0	EL PASO NATURAL G
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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
**********									
-ARMCLAR GAS CO				RECEIVED:	08/31/83	JA: PA			
8353893 20605		3703121177		103		WOLFEGANG #4 SERIAL #102A	SUMMERVILLE	0.0	T W PHILLIPS GAS
-ASHTOLA PRODUCTION CO				RECEIVED:	08/31/83	JA: PA			
8353882 18466		3712921875		108		CHARLES N PERKEY #1	MAYFIELD POOL	0.0	TEXAS EASTERN GAS
8353883 18755		3712921872		108		GEORGE HIXSON #1	HAWKEYE POOL	0.0	TEXAS EASTERN TRA
8353884 18756		3705120284		108		WILLIAM A KING #1	WALTERSBURG	0.0	INDUSTRIAL ENERGY
-ATLAS RESOURCES INC				RECEIVED:	08/31/83	JA: PA			
8353910 20723		3706327113		102-4		ANDREW W MOCK #1	PINE	0.0	INDUSTRIAL ENERGY
8353909		3706327440		102-4		DANIEL J LIEB #1	CHERRYHILL	0.0	INDUSTRIAL ENERGY
-CARL E MCCALL				RECEIVED:	08/31/83	JA: PA			
8353898 20693		3703121168		103		RUDELL HENRY #1	PORTER	0.0	APOLLO GAS CO
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	08/31/83	JA: PA			
8353890 20039		3706327122		102-4		OLIVE C STUCHELL WN-1940	GRANT	12.0	GENERAL SYSTEM PU
-DOC-MCC SERVICE CO				RECEIVED:	08/31/83	JA: PA			
8353885 18997		3712922043		108		HENRY W LANE ET AL 1552-1	SOUTH HUNTINGDON	11.4	TEXAS EASTERN TRA
-DORSO ENERGY				RECEIVED:	08/31/83	JA: PA			
8353916 20737		3708520389		102-2		FLOYD F ANDERSON SP-81-1-11	EAST LACKAWANNOCK	40.0	
8353915 20736		3708520389		107-TF		FLOYD F ANDERSON SP-81-1-11	EAST LACKAWANNOCK	40.0	
8353918 20739		3708520390		102-2		GIDEON J BYLER SP-81-1-12	EAST LACKAWANNOCK	40.0	
8353917 20738		3708520390		107-TF		GIDEON J BYLER SP-81-1-12	EAST LACKAWANNOCK	40.0	
8353920 20741		3708520392		102-2		LEE M HILLMAR SP-81-1-14	WILMINGTON	40.0	
8353919 20740		3708520392		107-TF		LEE M HILLMAR SP-81-1-14	WILMINGTON	40.0	
8353914 20735		3708520391		102-2		ROBERT S MOOSE SP-81-1-10	EAST LACKAWANNOCK	40.0	
8353913 20734		3708520391		107-TF		ROBERT S MOOSE SP-81-1-10	EAST LACKAWANNOCK	40.0	
-ENERGY PRODUCTION CO				RECEIVED:	08/31/83	JA: PA			
8353905 20706		3706325864		108		A PIZARIK #1	NOLO MOUNTAIN	4.2	COLUMBIA GAS TRAN
8353902 20701		3706325825		108		B F OLIVER #1	NOLO MOUNTAIN	14.0	COLUMBIA GAS TRAN
8353900 20699		3706325921		108		EDMONDSON #2	NOLO MOUNTAIN	10.6	COLUMBIA GAS TRAN
8353901 20700		3706325824		108		JOHN MYERS #1	NOLO MOUNTAIN	1.2	COLUMBIA GAS TRAN
8353906 20707		3706326524		108		M B STEPHENS #1A	NOLO MOUNTAIN	4.5	COLUMBIA GAS TRAN
8353907 20708		3706325959		108		MB STEPHENS #3	NOLO MOUNTAIN	10.0	COLUMBIA GAS TRAN
8353899 20698		3706325920		108		N EDMONDSON #1	NOLO MOUNTAIN	5.4	COLUMBIA GAS TRAN
8353903 20705		3706326047		108		OLIVER #3	NOLO MOUNTAIN	19.0	COLUMBIA GAS TRAN
8353904 20704		3706326523		108		OLIVER #4	NOLO MOUNTAIN	19.0	COLUMBIA GAS TRAN
-J & J ENTERPRISES INC				RECEIVED:	08/31/83	JA: PA			
8353911 20724		3703321388		103		R & P COAL CO #25	BRADY	0.0	COLUMBIA GAS TRAN
8353912 20727		3706321381		103		R & P COAL CO #41 (58A)	BRADY	0.0	COLUMBIA GAS TRAN
-J C ENTERPRISES				RECEIVED:	08/31/83	JA: PA			
8353891 20423		3706300000		103		LUFAY ANDERSON SWEET #125-1	SMICKSBURG	27.0	
8353892 20454		3700522140		103		NYE BRANCH NURSERY #146-1 JEF-22140	TIMBLIN	16.4	UNDER NEGOTIATION
-LEBOEUF ENERGY INC				RECEIVED:	08/31/83	JA: PA			
8353889 19271		3704922267		107-TF		DUBOWSKI #1 ERI-22267	WATERFORD	0.0	NATIONAL FUEL GAS
8353888 19270		3704922267		102-2		DUBOWSKI #1 ERI-22267	WATERFORD	0.0	NATIONAL FUEL GAS
8353887 19269		3704922450		102-1		MCGAHAN #1 ERI-22450	WATERFORD	0.0	NATIONAL FUEL GAS
8353886 19268		3704922450		107-TF		MCGAHAN #1 ERI-22450	WATERFORD	0.0	NATIONAL FUEL GAS
8353881 18350		3704922014		107-TF		PHILLIPS #1 ERI-22014	WATERFORD	0.0	NATIONAL FUEL GAS
8353880 18349		3704922014		102-2		PHILLIPS #1 ERI-22014	WATERFORD	0.0	NATIONAL FUEL GAS
-NEA CROSS CO				RECEIVED:	08/31/83	JA: PA			
8353897 20691		3704922688		107-TF		CYNTHIA REEMSNYDER #1	WATERFORD	10.0	NATIONAL FUEL GAS
8353896 20689		3704922688		102-2		CYNTHIA REEMSNYDER #1	WATERFORD	10.0	NATIONAL FUEL GAS
-S T JOINT VENTURE 82-D				RECEIVED:	08/31/83	JA: PA			
8353894 20625		3703321591		102-2		ECKLUND #1	JORDAN	25.0	COLUMBIA GAS TRAN
8353895 20626		3703321541		102-2		SINCLAIR #1	JORDAN	25.0	COLUMBIA GAS TRAN
-US ENERGY DEVELOPMENT CORP				RECEIVED:	08/31/83	JA: PA			
8353926 20755		3712331756		102-2		C & G MILLER #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353925 20754		3712331756		107-TF		C & G MILLER #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353922 20751		3712331759		102-2		EDWARD F DEMBY #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353921 20750		3712331759		107-TF		EDWARD F DEMBY #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353924 20753		3712331757		102-2		F & E FOSTER #1	COLUMBUS	15.0	COLUMBIA GAS TRAN
8353923 20752		3712331757		107-TF		F & E FOSTER #1	COLUMBUS	15.0	COLUMBIA GAS TRAN
8353928 20757		3712331758		102-2		L & A MILLER #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353927 20756		3712331758		107-TF		L & A MILLER #1	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353930 20759		3712331791		102-2		L & A MILLER #2	COLUMBUS	6.0	COLUMBIA GAS TRAN
8353929 20758		3712331791		107-TF		L & A MILLER #2	COLUMBUS	6.0	COLUMBIA GAS TRAN
-VICTORY ENERGY CO				RECEIVED:	08/31/83	JA: PA			
8353908 20711		3703321583		102-2		U MILCHAK #1 CLE 21583	BURNSIDE	36.0	COLUMBIA GAS TRAN
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
**********									
-EXXON CORPORATION				RECEIVED:	08/30/83	JA: LA 3			
8353877 G0-1373		1781740100	D	102-5		OCS-G 2969 #A-3	MISSISSIPPI CANYON	195.0	SOUTHERN NATURAL
8353876 G1-2001		1781740108	D	102-5		OCS-G 2969 #A-4	MISSISSIPPI CANYON	1020.0	SOUTHERN NATURAL
-PENNZOIL COMPANY				RECEIVED:	08/30/83	JA: TX 3			
8353871 G2-3046		4270940299		102-5		HIGH ISLAND A-563 #B-1B	HIGH ISLAND AREA SOUT	848.6	UNITED GAS PIPE L
8353870 G2-3056		4270940405		102-5		HIGH ISLAND A-563 #B-13	HIGH ISLAND AREA SOUT	529.9	UNITED GAS PIPE L
8353872 G2-3057		4270940405		102-5		HIGH ISLAND A-563 #B-13A	HIGH ISLAND AREA SOUT	203.7	UNITED GAS PIPE L
8353873 G2-3058		4270940405		102-5		HIGH ISLAND A-563 #B-13B	HIGH ISLAND AREA SOUT	203.7	UNITED GAS PIPE L
8353879 G2-3050		4270940389		102-5		HIGH ISLAND A-563 #B-8	HIGH ISLAND AREA SOUT	438.9	UNITED GAS PIPE L
8353874 G2-3051		4270940389		102-5		HIGH ISLAND A-563 #B-8A	HIGH ISLAND AREA SOUT	407.3	UNITED GAS PIPE L
8353869 G2-3052		4270940389		102-5		HIGH ISLAND A-563 #B-8B	HIGH ISLAND AREA SOUT	339.5	UNITED GAS PIPE L
8353878 G2-3053		4270940396		102-5		HIGH ISLAND A-563 #B-9	HIGH ISLAND AREA SOUT	2800.5	UNITED GAS PIPE L
8353875 G2-3049		4270940338		102-5		HIGH ISLAND A-564 #B-6	HIGH ISLAND AREA SOUT	5134.2	UNITED GAS PIPE L
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
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-AAA OPERATING CO INC				RECEIVED:	08/31/83	JA: NM 4			
8353995 NM0436-83-PB		3004523462		108-PB		FEDERAL E #6	LARGO-CHACRA	0.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	08/31/83	JA: NM 4			
8353958 NM 0124-83		3004506258		108		C A MCADAMS "B" #2	BASIN DAKOTA	19.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8353933	NM 0156-83	3004509188		108		E E ELLIOTT "B" #6	BLANCO-PICTURED CLIFF	16.0	EL PASO NATURAL G
8353962	NM0126-83	3003920000		103		JICARILLA CONTRACT 148 #13	OTERO CHACRA	16.0	EL PASO NATURAL G
-BEACH EXPLORATION INC				RECEIVED:	08/31/83	JA: NM 4			
8353968	NM0350-83	3002527959		103		DANCIGER #1	JALMAT YATES SEVEN RI	100.8	PHILLIPS PETROLEU
-DUGAN PRODUCTION CORP				RECEIVED:	08/31/83	JA: NM 4			
8353942	NM1582-82	3004523545		108		WESTERN FEDERAL #3Y	SOUTH GALLEGOS FRUITL	15.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	08/31/83	JA: NM 4			
8353978	NM0647-83-PB	3004506373		108-PB		ANGEL PEAK #2	BASIN	0.0	EL PASO NATURAL G
8353976	NM0643-83-PB	3004520758		108-PB		ATLANTIC C #9	BLANCO	0.0	EL PASO NATURAL G
8353938	NM-0132-83	3004505044		108		BALLARD #10	BALLARD - PICTURED CL	19.0	EL PASO NATURAL G
8353991	NM0661-83-PB	3003920278		108-PB		CANYON LARGO UNIT #154	OTERO	0.0	EL PASO NATURAL G
8353979	NM0660-83-PB	3003921172		108-PB		CANYON LARGO UNIT #288DK	BASIN	0.0	EL PASO NATURAL G
8353967	NM-1454-82	3004522024		103		FIELDS #11	BLANCO - PICTURED CLI	24.0	EL PASO NATURAL G
8353941	NM-1925-82	3004522824		103		FIELDS #11	BLANCO-PICTURED CLIFF	22.0	EL PASO NATURAL G
8353972	NM0645-83-PB	3004507163		108-PB		FLORANCE C #10	BASIN	0.0	EL PASO NATURAL G
8353982	NM0648-83-PB	3004513035		108-PB		GRAMBLING #4	BLANCO	0.0	EL PASO NATURAL G
8353975	NM0642-83-PB	3004520757		108-PB		HEATON #26	BLANCO	0.0	EL PASO NATURAL G
8353989	NM0664-83-PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8353934	NM-0161-83	3004520883		108		HUBBELL #9	BLOOMFIELD - CHACRA	16.0	EL PASO NATURAL G
8353992	NM0001-83-ER	3004520764		108-ER		HUERFANO UNIT #213	BASIN	0.0	EL PASO NATURAL G
8353973	NM0648-83-PB	3004521809		108-PB		HUERFANO UT #265	ANGELS PEAK & BASIN	0.0	EL PASO NATURAL G
8353986	NM0655-83-PB	3004507451		108-PB		JOHNSTON #4	AZTEC	0.0	EL PASO NATURAL G
8353980	NM0650-83-PB	3003905206		108-PB		LINDRITH UT #53	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353981	NM0649-83-PB	3004513111		108-PB		MANSFIELD #5	BLANCO	0.0	EL PASO NATURAL G
8353984	NM0651-83-PB	3004509228		108-PB		MANSFIELD #6	BLANCO	0.0	EL PASO NATURAL G
8353960	NM-0131-83	3004525479		103		MOORE #10	BLANCO PICTURED CLIFF	75.0	EL PASO NATURAL G
8353969	NM0663-83-PB	3004508643		108-PB		RIDDLE A #5	BLANCO	0.0	EL PASO NATURAL G
8353983	NM0652-83-PB	3004520775		108-PB		RIDDLE B #6	BLANCO	0.0	EL PASO NATURAL G
8353957	NM-0137-83	3003906951		108		RINCON UNIT #158	BASIN-DAKOTA	19.0	EL PASO NATURAL G
8353985	NM0656-83-PB	3003906893		108-PB		RINCON UNIT #69	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353970	NM0639-83-PB	3003906925		108-PB		RINCON UT #70	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353990	NM0662-83-PB	3003905999		108-PB		SAN JUAN 28-7 UNIT #119	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353939	NM-0134-83	3003921106		108		SAN JUAN 28-7 UNIT #213	LARGO - CHACRA	20.0	EL PASO NATURAL G
8353988	NM0657-83-PB	3003906901		108-PB		SAN JUAN 28-7 UNIT #65	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353974	NM0641-83-PB	3003907163		108-PB		SAN JUAN 28-7 UNIT #67	SOUTH BLANCO	0.0	EL PASO NATURAL G
8353987	NM0659-82-PB	3003907124		108-PB		SAN JUAN 28-7 UNIT #86 PC-MV	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8353936	NM 0138-83	3003907868		108		SAN JUAN 30-6 UNIT #43	BLANCO-MESAVERDE	18.0	EL PASO NATURAL G
8353977	NM0646-83-PB	3004509161		108-PB		SELLERS #6	BASIN	0.0	EL PASO NATURAL G
8353971	NM0644-83-PB	3004520791		108-PB		SUNRAY #4	BLANCO	0.0	EL PASO NATURAL G
8353943	NM-1605-82	3004507497		108		WARREN #1	BLANCO - MESA VERDE	24.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED:	08/31/83	JA: NM 4			
8353935	NM-0164-83	3004506920		108		GALLEGOS CANYON UNIT P C #62	KUTZ WEST PICTURED CL	12.8	EL PASO NATURAL G
-GEORGE E COLEMAN				RECEIVED:	08/31/83	JA: NM 4			
8353949	NM 1318-82	3004521498		108		DRY CREEK #1	BISTI GALLUP	26.0	EL PASO NATURAL G
-GETTY OIL COMPANY				RECEIVED:	08/31/83	JA: NM 4			
8353955	NM-0174-83	3004505221		108		J C DAUM #1	BISTI LOWER GALLUP	18.0	EL PASO NATURAL G
-GULF OIL CORPORATION				RECEIVED:	08/31/83	JA: NM 4			
8353997	NM0003-83-ER	3003906102		108-ER		LITTLE ANGEL #1	TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
-HNG OIL COMPANY				RECEIVED:	08/31/83	JA: NM 4			
8353948	NM 0132-82-B	3001523846		103		GOLDEN LANE "1" FEDERAL #1	WILDCAT MORROW	511.8	EL PASO NATURAL G
-INTEGRATED ENERGY INC				RECEIVED:	08/31/83	JA: NM 4			
8353946	NM-1451-82	3004320363		108		FEDERAL 26-22-7 #1	RUSTY CHACRA EXTENDIO	19.9	SOUTHWEST GAS COR
-LIVELY EXPLORATION COMPANY				RECEIVED:	08/31/83	JA: NM 4			
8353996	NM0515-83-PB	3004521075		108-PB		LIVELY #4	BASIN DAKOTA	0.0	
-NORTHWEST EXPLORATION COMPANY				RECEIVED:	08/31/83	JA: NM 4			
8353964	NM0071-83102	3004320613		102-2	107-TF	NATANI #10	UNDESIGNATED RUSTY CH	7.1	NORTHWEST PIPELIN
8353965	NM0072-83102	3004320609		102-2	107-TF	NATANI #14	UNDESIGNATED RUSTY CH	74.4	NORTHWEST PIPELIN
8353961	NM0073-83102	3004320611		102-2	107-TF	NATANI #16	UNDESIGNATED RUSTY CH	37.5	NORTHWEST PIPELIN
8353963	NM-0070-83	3004320434		107-TF		NATANI #2	UNDESIGNATED RUSTY CH	24.8	NORTHWEST PIPELIN
8353956	NM0182-83102	3004320641		102-2	107-TF	NATANI #20	UNDESIGNATED RUSTY CH	0.4	NORTHWEST PIPELIN
8353954	NM0181-83102	3004320612		102-2	107-TF	NATANI #6	UNDESIGNATED RUSTY CH	1.3	NORTHWEST PIPELIN
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	08/31/83	JA: NM 4			
8353937	NM-0145-83	3004521583		108		COX CANYON UNIT 18	BLANCO PICTURED CLIFF	29.3	NORTHWEST PIPELIN
8353994	NM0408-83-PB	3003907946		108-PB		ROSA UNIT #15	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
PETROLEUM CORPORATION OF TEXAS				RECEIVED:	08/31/83	JA: NM 4			
8353967	NM 0335-83	3002500000		103		FEDERAL Q #1	QUERECHO PLAINS	133.2	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO				RECEIVED:	08/31/83	JA: NM 4			
8353951	NM-0172-83	3004507381		108		BRINK #2	FULCHER KUTZ	0.5	SOUTHERN UNION GA
8353993	NM0005-83-ER	3003920121		108-ER		CAT DRAW #1 (DK)	BASIN DAKOTA	0.0	EL PASO NATURAL G
8353955	NM-0178-83	3004523123		108		HALE #5	BASIN	11.0	GAS CO OF NEW MEX
8353950	NM-0168-83	3004507371		108		MCCLANAHAN #13	AZTEC	19.0	SOUTHERN UNION GA
8353932	NM-0167-83	3004500000		108		MCCLANAHAN #4	AZTEC	18.0	SOUTHERN UNION GA
8353931	NM-0166-83	3004513308		108		THOMPSON #2	BLANCO	18.0	SOUTHERN UNION GA
8353952	NM-0173-83	3004506685		108		WHITLEY #5	BASIN	16.0	SOUTHERN UNION GA
-UNICON PRODUCING CO				RECEIVED:	08/31/83	JA: NM 4			
8353966	NM1852-82A	3003922982		103		JICARILLA H #6-Y	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8353940	NM 1852-82-B	3003922982		103		JICARILLA H #6-Y	BASIN DAKOTA	0.0	SOUTHERN UNION GA
8353944	NM-1555-82	3003922529		108		JICARILLO L-7	OTERO CHACRA SD BLANC	9.1	GAS CO OF NEW MEX
8353959	NM-0130-83	3004524638		108		NEWSOM 'A' #12	BALLARD PICTURED CLIF	3.0	GAS CO OF NEW MEX
8353945	NM-1560-82	3004525076		108		NEWSOM A-14	BALLARD PICTURED CLIF	2.9	GAS CO OF NEW MEX
-YATES PETROLEUM CORPORATION				RECEIVED:	08/31/83	JA: NM 4			
8353998	NM037483107	3000561915		107-TF		BINNON TT FEDERAL #1	ABO	0.0	

[FR Doc. 83-26437 Filed 9-27-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 972]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 21, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS

ISSUED SEPTEMBER 21, 1983

VOLUME 972

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-SHELL OIL CO				RECEIVED:	09/02/83	JA: MI			
8354308		2114100000		102-2		STATE ALLIS 3-29A	ALLIS 29A	70.4	MICHIGAN CONSOLID
8354306		2114100000		102-2		STATE ALLIS 4-19	ALLIS 19A	60.6	MICHIGAN CONSOLID
8354305		2113700000		102-2		STATE CORNITH 1-12	CORNITH 12	939.9	MICHIGAN CONSOLID
8354307		2113700000		102-2		STATE CORNITH 1-13B	CORNITH 14	104.7	MICHIGAN CONSOLID
8354304		2103100000		102-2		STATE FOREST 2-24A	FOREST 24	78.8	MICHIGAN CONSOLID
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354127	F-03-070463	4232131286		102-4	103	DANDY #1	BUCKEYE SOUTH (F-10-B	0.0	
-ALPAR RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354226	F-10-071818	4235731379		102-4		PEARSON 4-109	ALPAR (HUNTON)	30.0	PHILLIPS PETROLEU
8354227	F-10-071819	4235731397		102-4		PEARSON 5-109	ALPAR (HUNTON)	90.0	PHILLIPS PETROLEU
-AMINOIL USA INC				RECEIVED:	09/02/83	JA: TX			
8354048	F-04-66673	4247933347		102-4	103	LOD MOGLIA #1-L	GUERRA (10,000) PROPO	1813.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354285	F-8A-071946	4238338917		103		ANTON IRISH CLEARFORK UNIT #460	ANTON IRISH	40.0	WESTAR TRANSMISSI
8354155	F-10-071850	4235758059		103		EARL WAIDE #3	S E FARNSWORTH	48.0	
8354144	F-08-070772	4213534059		102-4		FRANK COWDEN R/A "K" #24	COWDEN N (STRAWN)	6.0	AMOCO PRODUCTION
-APEX PETROLEUM INC				RECEIVED:	09/02/83	JA: TX			
8354179	F-7B-071357	4208333431		102-4		JOHN E WOLF #15 (19329)	WOLF (SERRATT LOWER)	20.0	EL PASO HYDROCARB
-ARCO OIL AND GAS COMPANY				RECEIVED:	09/02/83	JA: TX			
8354094	F-04-68530	4221531320		102-4		B J DUDLEY UNIT #1	MERCEDES (7700)	30.0	TENNESSEE GAS PIP
-ARMSTRONG PETROLEUM CORP				RECEIVED:	09/02/83	JA: TX			
8354102	F-7B-068984	4247733337		102-4		J T DAVIS #2	SLUDER S MISSISSIPPI	36.0	HST GATHERING CO
-B & M OPERATING CO INC				RECEIVED:	09/02/83	JA: TX			
8354134	F-03-070541	4248132432		103		BOCK #1 I.D. NO.	SPANISH CAMP (HUNGERF	100.0	DELHI GAS PIPELIN
8354132	F-03-070539	4248132433		103		LOUIE MACHA #1 I.D. NO.	SPANISH CAMP SOUTH (4	100.0	LONE STAR GAS CO
8354133	F-03-070540	4248132429		103		MARCIAL SORREL II #1 I.D. #105383	SPANISH CAMP SOUTH (4	100.0	DELHI GAS PIPELIN
-B & N PETROLEUM INC				RECEIVED:	09/02/83	JA: TX			
8354170	F-06-071225	4240131594		103	107-TF	BUFORD AND BLOW #1	OAK HILL S (COTTON VA	360.0	TEXAS EASTERN TRA
-BILL FENN INC				RECEIVED:	09/02/83	JA: TX			
8354189	F-03-071464	4228731374		102-2		ERNEST T. #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-BOW VALLEY PETROLEUM INC				RECEIVED:	09/02/83	JA: TX			
8354150	F-03-070919	4231330423		103		THEISS #1	NORTH ZULCH (L-D-B-G)	41.0	LONE STAR GAS CO
-BTA OIL PRODUCERS				RECEIVED:	09/02/83	JA: TX			
8354130	F-08-070499	4237134012		107-DP		JV-P KIMBALL #1 8203	ROJO CABALLOS	584.0	NORTHERN NATURAL
8354213	F-8A-071603	4211531830		103		WINFORD #4	WELCH SE (SFRABERRY)	4.5	PHILLIPS PETROLEU
-BURK ROYALTY CO				RECEIVED:	09/02/83	JA: TX			
8354178	F-09-071385	4248731645		103		NORMA HOHLE #1	WILBARGER COUNTY REGU	0.0	KIBO COMPRESSOR C
-C F LAWRENCE & ASSOC INC				RECEIVED:	09/02/83	JA: TX			
8354239	F-7C-071843	4210500000		102-4		TODD "V" #1 10033	HENLAW (GRAYBURG)	0.0	APACHE GAS CORP
-C R GOBER				RECEIVED:	09/02/83	JA: TX			
8354298	F-7B-071993	4244732193		103		BROWN #2 (16391)	THROCKMORTON COUNTY R	1.0	THROCKMORTON GAS
-CASS OIL CO				RECEIVED:	09/02/83	JA: TX			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8354029	F-7C-60564	4243532711		103	107-TF	ALLISON-MIERS 7001	SAWYER (CANYON)	68.9	EL PASO NATURAL G
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	09/02/83	JA: TX			
8354025	F-08-57471	4243131125		107-TF		D. L. GLASS #7	CONGER SW (PENN)	48.5	NORTHERN NATURAL
8354026	F-08-57618	4243131117		107-TF		I W TERRY #15	CONGER S W (PENN)	126.0	NORTHERN NATURAL
8354124	F-03-070281	4205131166		102-2		LORENE CALVIN #1	COOKS POINT (WOODBINE	5.1	FERGUSON CROSSING
-CHARLES H BENTLEY				RECEIVED:	09/02/83	JA: TX			
8354028	F-09-60146	4250300000		108-ER		IOLA HAZELTON #1	GRAHAM SOUTH (CADDO)	0.5	LONE STAR GAS CO
-CHEVRON U S A INC				RECEIVED:	09/02/83	JA: TX			
8354263	F-8A-071900	4241532367		103		SACROC UNIT #116-6	KELLY-SNYDER	3.8	EL PASO NATURAL G
8354264	F-8A-071901	4241532396		103		SACROC UNIT #121-7	KELLY-SNYDER	26.0	EL PASO NATURAL G
8354273	F-8A-071912	4241532397		103		SACROC UNIT #155-8	KELLY-SNYDER	81.0	EL PASO NATURAL G
8354269	F-8A-071908	4241532387		103		SACROC UNIT #172-7	KELLY-SNYDER	25.0	EL PASO NATURAL G
8354271	F-8A-071910	4241532370		103		SACROC UNIT #18-14	KELLY-SNYDER	26.0	EL PASO NATURAL G
8354270	F-8A-071909	4241532366		103		SACROC UNIT #207-5	KELLY-SNYDER	13.0	EL PASO NATURAL G
8354272	F-8A-071911	4241532400		103		SACROC UNIT #46-13	KELLY-SNYDER	40.0	EL PASO NATURAL G
8354274	F-8A-071913	4241532393		103		SACROC UNIT NO 153-9	KELLY-SNYDER	13.0	EL PASO NATURAL G
-CHITAL PETROLEUM CORP				RECEIVED:	09/02/83	JA: TX			
8354061	F-7B-67355	4244700000		102-4	103	JOHN T. DAVIS "B" #1	GALPIN (MISS)	0.0	H S T GATHERING C
-CIBOLA OIL & GAS CORP				RECEIVED:	09/02/83	JA: TX			
8354079	F-06-68411	4242330652		102-4	103	MAYNARD-SANDERS UNIT #1	CHAPEL HILL (TRAVIS P	40.0	TRIANGLE PIPELINE
-CLAYTON W WILLIAMS JR				RECEIVED:	09/02/83	JA: TX			
8354135	F-08-070579	4247532598		103		WILSON 147-1	WIL-JOHN N W	18.0	CLAJON GAS CO
-COASTAL OIL & GAS CORP				RECEIVED:	09/02/83	JA: TX			
8354299	F-8A-071997	4216532584		103		SO HARRIS UNIT 6-21	HARRIS	8.8	PHILLIPS PETROLEU
8354295	F-8A-071967	4216532583		103		SO HARRIS 6-22	HARRIS	8.8	PHILLIPS PETROLEU
8354296	F-8A-071968	4216532582		103		SO HARRIS 6-23	HARRIS	6.8	PHILLIPS PETROLEU
-CONOCO INC				RECEIVED:	09/02/83	JA: TX			
8354147	F-04-070872	4247933345		107-TF		ALICIA HENRY - BMT "A" #1	PERDIDO (LOBO)	190.0	HOUSTON PIPELINE
8354036	F-04-64733	4247933345		102-4	103	ALICIA HENRY - BMT "A" #1	PERDIDO (LOBO)	190.0	HOUSTON PIPELINE
8354125	F-10-070315	4206500000		108		BURNETT 5A	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
8354290	F-08-071953	4238900000		108		FORD-GERALDINE UNIT #219 ID 21021	GERALDINE/FORD/	2.7	EL PASO NATURAL G
8354288	F-08-071951	4238900000		108		FORD-GERALDINE UNIT #266 ID 21021	GERALDINE/FORD	1.3	EL PASO NATURAL G
8354293	F-08-071956	4231731196		108		GRISHAM & GREEMAN #15 ID 22261	SPRABERRY/TREND AREA	3.5	ADOBE OIL CO
8354287	F-7B-071950	4243331535		103		GUEST CANYON SAND UNIT #52 ID 10855	GUEST (CANYON SAND)	1825.0	CITIES SERVICE CO
8354289	F-08-071952	4222732699		108		H R CLAY -E- #62 ID 16993	HOWARD-GLASSCOCK/GLOR	49.3	PHILLIPS PETROLEU
8354095	F-04-68718	4250331645		103	107-TF	J G RATHMELL D81	HUNDIDO (LOBO)	146.0	HOUSTON PIPELINE
8354291	F-08-071954	4213531726		108		MRS L E WIGHT -4- #17 ID 23778	NORTH COWDEN	4.6	AMOCO PRODUCTION
8354144	F-01-070860	4232331500		103		N J CHITTIM #E-4	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8354145	F-04-070839	4242731627		108		T B SLICK EST H-936 #167	RINCON (VICKSBURG 706	18.0	TENNESSEE GAS PIP
8354292	F-7B-071955	4243330425		108		WEST FLOWERS UNIT #55 ID 11787	FLOWERS W (CANYON SAN	5.1	CITIES SERVICE CO
-COOK PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354047	F-09-66626	4223700000		102-4	103	FURR #1		0.0	LONE STAR GAS CO
-CORDOVA RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354238	F-7B-071841	4213334625		103		D G MOORE #2	EASTLAND COUNTY REGUL	159.5	SOUTHWESTERN GAS
-COURSON OIL & GAS INC				RECEIVED:	09/02/83	JA: TX			
8354257	F-10-071889	4235731341		107-TF		ELDON 1-747C	ELLIS RANCH (CLEVELAN	200.0	TRANSWESTERN PIPE
8354261	F-10-071894	4235730939		107-TF		FIRST NATIONAL TRUST #2-571	ELLIS RANCH (CLEVELAN	125.0	TRANSWESTERN PIPE
8354252	F-10-071882	4235731195		107-TF		HERNDON 1-662	DUDE WILSON (MARMATON	110.0	TRANSWESTERN PIPE
8354258	F-10-071890	4235731252		107-TF		HERNDON 2-662C	DUDE WILSON (CLEVELAN	90.0	TRANSWESTERN PIPE
8354253	F-10-071884	4235731058		107-TF		KENT #1-570	DUDE WILSON (CLEVELAN	270.0	INTERNORTH INC
8354259	F-10-071891	4229330839		107-TF		LANDERS #2-855C	BRADFORD (CLEVELAND)	250.0	TRANSWESTERN PIPE
8354254	F-10-071885	4235731319		107-TF		PATRICIA 1-63	ELLIS RANCH'(CLEVELAN	250.0	DIAMOND SHAMROCK
-CUMMINS & WALKER OIL CO INC				RECEIVED:	09/02/83	JA: TX			
8354082	F-02-68447	4229700000		102-4		DOUGHERTY ESTATE "A" #1	MOUNTAINVIEW N (8100)	0.0	HOUSTON PIPE LINE
-D L DORLAND INC				RECEIVED:	09/02/83	JA: TX			
8354137	F-08-070602	4222732995		103		M. M. O'DANIEL EST. "A" 27645	DORLAND (FUSSELMAN)	8.5	GETTY OIL CO
-DIRECTION ENERGY CORP				RECEIVED:	09/02/83	JA: TX			
8354211	F-10-071596	4223331574		103		SANFORD ESTATES #7	PANHANDLE HUTCHINSON	50.0	PANHANDLE PRODUCI
-DISCORBIS OIL CO				RECEIVED:	09/02/83	JA: TX			
8354149	F-04-070911	4213136232		102-4		FITZSIMMONS #1	MONTEMAYOR (5500')	54.0	VALLEY GAS TRANSM
-DISCOVERY OPERATING INC				RECEIVED:	09/02/83	JA: TX			
8354101	F-08-068883	4232931128		103		HOFFERKAMP "C" #1	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
-EL PASO NATURAL GAS COMPANY				RECEIVED:	09/02/83	JA: TX			
8354247	F-10-071872	4248326095		108		HALL A #1	PANHANDLE EAST	44.0	EL PASO NATURAL G
-EMPIRE EXPLORATION CORP				RECEIVED:	09/02/83	JA: TX			
8354193	F-7B-071581	4222130636		102-2		LITTLE #2 102916	N E GRANDBURY	0.0	EMPIRE PIPELINE C
8354192	F-7B-071498	4222130670		102-2		LITTLE GAS UNIT #4 093793	MILLS	0.0	EMPIRE PIPELINE C
-EVANS PETROLEUM CORP				RECEIVED:	09/02/83	JA: TX			
8354062	F-10-67470	4206500000		103		ELLEDGE #1	PANHANDLE CARSON	110.0	GETTY OIL CO
-EXXON CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354251	F-04-071889	4213136082		102-4		EXXON-LICHTENBERGER FEE #6 105877	SEVEN SISTERS EAST (0	1204.5	ARMCO STEEL CORP
8354244	F-04-071864	4235532110		102-4		FLOUR BLUFF OIL UNIT II-1-F 10268	FLOUR BLUFF (1-02)	303.3	ARMCO STEEL CORP
8354172	F-08-071313	4210333121		103		J B TUBB A/C 1 #273	SAND HILLS (MCKNIGHT)	15.0	EL PASO HYDROCARB
8354156	F-06-071056	4240131623		102-4		L E COOLIDGE A/C 1 #37	OVERTON N E (PETTIT)	66.0	ARMCO STEEL CORP
8354159	F-7C-071125	4243131291		103		LOU E JOHNSON ESTATE A/C 1 845	JAMESON (STRAWN)	27.0	KOCH HYDROCARBON
8354171	F-04-071228	4242731716		102-4		MCGILL BROS 492 (ID PENDING)	KELSEY S (16-C SW)	66.0	TRUNKLINE GAS CO
8354221	F-04-071787	4242731705		102-4		N R & E A MONTALVO 29 (ID 105906)	SUN (6000)	218.9	TENNGASCO INC
8354154	F-03-070978	4201530488		103		ROBERT G PAINE #37	RACCOON BEND/COCKFIEL	3.0	TEXAS SOUTHEASTER
8354131	F-80-070500	4216532494		103		ROBERTSON CLEARFORK UNIT #1903	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
8354163	F-8A-071368	4216532543		103		ROBERTSON CLEARFORK UNIT #6701	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
8354173	F-08-071337	4222732738		102-4		S WALDRON #3	MOORE (DEEP FSLM)	22.0	EL PASO HYDROCARB
8354250	F-04-071879	4204730745		103		SANTA FE RANCH 47-F (105905)	SANTA FE (ZONE 3)	298.0	ARMCO STEEL CORP
8354282	F-06-071943	4207330508		103		T J CUNNINGHAM EST TR 1 #9	RICHES (WOODBINE)	0.1	UNITED GAS PIPELI
8354297	F-04-071983	4213135829		103		V KOHLER A-138 099632	KOHLER NE (MIRANDO #2	3.7	TENNESSEE GAS PIP
8354220	F-04-071786	4213135858		103		V KOHLER A-141 099632	KOHLER N E (MIRANDO #	24.8	TENNESSEE GAS PIP
-FARGO ENERGY CORP				RECEIVED:	09/02/83	JA: TX			
8354071	F-03-67912	4214931462		102-2		BYLER UNIT A #1	N/A	182.0	PHILLIPS PETROLEU
8354096	F-03-68779	4214931519		102-2		VAN WART A #1	GIDDINGS (AUSTIN CHAL	182.0	PHILLIPS PETROLEU
-FLOURNOY PRODUCTION COMPANY				RECEIVED:	09/02/83	JA: TX			
8354214	F-04-071804	4235532148		102-4		F E LONDON #1	MOBIL-DAVID	190.0	HOUSTON PIPELINE
-FOSSIL PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354237	F-08-071835	4233532448		102-4		MCCABE #1 ID #28096	JAMESON N (ELLEN)	29.0	SUN EXPLORATION &
-GENERAL PRODUCTION CO INC				RECEIVED:	09/02/83	JA: TX			
8354187	F-03-071462	4228731102		102-2		C E NEAL UNIT 1, #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8354188	F-03-071463	4228730882		102-2		E MICHAEL LALLINGER #1 #14626	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8354190	F-03-071465	4228730787		102-2		RONALD JOHNSON #1 #14014	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-GHR ENERGY CORP				RECEIVED:	09/02/83	JA: TX			
8354109	F-04-069273	4250331621		102-4	107-TF	MCMURREY #32	MCMURREY (LOBO)	900.0	NATURAL GAS PIPEL
-GOLDSTON OIL CORP				RECEIVED:	09/02/83	JA: TX			
8354151	F-01-070944	4231131304		102-4	103	H C EDRINGTON GAS UNIT #2-C ID #N/A	ROOS (1650')-WILL BE	110.0	TENNESSEE GAS PIP
8354152	F-01-070945	4231131304		102-4	103	H C EDRINGTON GAS UNIT #2-T ID #N/A	ROOS (1850')-WILL BE	75.0	TENNESSEE GAS PIP
-GRACE PETROLEUM CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354039	F-06-65677	4234730490		103		BEN IRWIN #1	GARRISON SOUTH (PETTI	0.0	UNITED GAS PIPELI
-GRAHAM ENERGY LTD				RECEIVED:	09/02/83	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8354126	F-09-070419	4223733231		103		STEPHENS A-#1	JUPITER (CONGL 3RD)	61.6	SOUTHWESTERN GAS
-GULF OIL CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354240	F-08-071844	4208333094		103		TRIPLE-N (GRAYBURG) CONS #A-14-M	TRIPLE-N (GRAYBURG)	0.0	PHILLIPS PETROLEU
8354231	F-08-071825	4210302305		108		W N WADDELL #10	SAND HILLS (JUDKINS)	8.7	H & T GATHERING C
8354230	F-08-071822	4210332193		108		W N WADDELL #1141	SAND HILLS (JUDKINS)	14.2	H & T GATHERING C
8354233	F-08-071827	4210302463		108		W N WADDELL #173	SAND HILLS (TUBB)	9.9	H & T GATHERING C
8354234	F-08-071828	4210301806		108		W N WADDELL #338	SAND HILLS (JUDKINS)	1.3	H & T GATHERING C
8354235	F-08-071829	4210301916		108		W N WADDELL #457	RUNNING W (TUBB)	3.8	H & T GATHERING C
8354236	F-08-071830	4210302026		108		W N WADDELL #576	SAND HILLS (JUDKINS)	1.8	H & T GATHERING C
8354232	F-08-071826	4210302355		108		W N WADDELL #61	SAND HILLS WEST (WOLF	16.1	H & T GATHERING C
-GUPTON GAS CO				RECEIVED:	09/02/83	JA: TX			
8354196	F-7B-071545	4236732450		102-4		ADDISON-TARPON #1 (N/A)	DENNIS SW (2700)	0.0	NORTHERN GAS PROD
-H & S OPERATING INC				RECEIVED:	09/02/83	JA: TX			
8354186	F-09-071450	4223735074		102-4		CHERRYHOMES #3	STEWARTON (CONGL)	12.0	TEXAS UTILITIES F
-HINTON PRODUCTION COMPANY				RECEIVED:	09/02/83	JA: TX			
8354073	F-06-68115	4240131572		102-4		TUFCO #1	MINDEN (RODESSA, 6370	500.0	TEXAS UTILITIES F
-HRUBETZ OIL CO				RECEIVED:	09/02/83	JA: TX			
8354246	F-7B-071870	4208333314		102-4		RICHARD JOHNSON #8	HRUBETZ (ELLEN)	37.0	
8354245	F-7B-071869	4208333552		102-4		RICHARD JOHNSON #9	HRUBETZ (ELLEN)	22.0	
-HYQUEST ENERGY INC				RECEIVED:	09/02/83	JA: TX			
8354180	F-02-071431	4229733215		102-4		PARKER #1	JACKSON RANCH (YEGUA	180.0	LABRADOR ENERGY I
-INDIAN WELLS OIL CO				RECEIVED:	09/02/83	JA: TX			
8354286	F-7C-071949	4223532030		102-2		MCMANUS 37-2	PROBANDT (CANYON)	0.0	NORTHERN NATURAL
8354280	F-7C-071933	4223531965		103		ROCKER "B" 1-1	ROCKER "B" - CANYON	0.0	NORTHERN NATURAL
8354281	F-7C-071934	4223532019		103		ROCKER "B" 1949-1	ROCKER "B" CANYON	0.0	NORTHERN NATURAL
8354279	F-7C-071932	4222531984		103		ROCKER "B" 2-1	ROCKER "B" CANYON	0.0	NORTHERN NATURAL
8354110	F-7C-069484	4223532017		102-2		SMITH 59-4	PROBANDT-LEONARD	0.0	NORTHERN NATURAL
-J E M RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354161	F-08-071155	4249531508		103		CAMPBELL C #2	KEYSTON (COLBY)	14.0	CABOT PIPELINE CO
-J O BRUMMETT				RECEIVED:	09/02/83	JA: TX			
8354198	F-03-071549	4231330395		102-4		U S ENERGY SEARCH #105240	NOT APPLICABLE	433.0	PECOS PRODUCING &
-JET LTD				RECEIVED:	09/02/83	JA: TX			
8354242	F-08-071847	4237100000		108		GROVE #1 #019409	ABELL (CLEAR FORK UPP	14.8	NORTHERN GAS PROD
8354241	F-08-071846	4237100000		108		GROVE A 1-D #019404	ABELL (SAN ANDRES GAS	14.8	NORTHERN GAS PROD
-JOHN H YOUNG INC				RECEIVED:	09/02/83	JA: TX			
8354055	F-03-66905	4214900000		102-2		HARBERS #1	GIDDINGS (EDWARDS GAS	0.0	CLAJON GAS CO
-JOHN L COX				RECEIVED:	09/02/83	JA: TX			
8354035	F-08-63633	4231732609		103		BILLY MCMURRIES #1	SPRABERRY (TA)	10.0	NORTHERN GAS PROD
8354034	F-8A-63625	4211531742		103		ETHEREDGE #1 RRC #64184	ACKERLEY (DEAN SAND)	10.0	GETTY OIL CO
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	09/02/83	JA: TX			
8354023	F-10-031683	4242100000		108-ER		WHORTON "B" #1	TEXAS HUGOTON	0.0	
-KEITH D GRAHAM				RECEIVED:	09/02/83	JA: TX			
8354164	F-03-071188	4205131671		102-2		FOJTIK UNIT #1	CLAYTON (TAYLOR)	197.1	CHAMPLIN PETROLEU
-KETAL OIL PRODUCING CO				RECEIVED:	09/02/83	JA: TX			
8354275	F-7C-071917	4208130681		103		GILLINGHAM #1	MEADOW CREEK (CANYON)	14.6	SUN EXPLORATION &
-KEY PRODUCTION COMPANY				RECEIVED:	09/02/83	JA: TX			
8354191	F-06-071473	4236531546		102-4		PARKER ESTATE #1	CARTHAGE (TRANSITIONA	250.0	WESTERN GAS CORP
-KILROY CO OF TEXAS				RECEIVED:	09/02/83	JA: TX			
8354072	F-03-67967	4236130450		102-4		ARCO-SHANNON #2-C	SHANNON (FRIO)	1095.0	UNITED TEXAS TRAN
-LADD PETROLEUM CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354179	F-7C-071388	4210534444		103	107-TF	MONTGOMERY #11-8	OZONA (CANYON SAND)	263.0	AMERICAN PIPELINE
-LAEL ENERGY				RECEIVED:	09/02/83	JA: TX			
8354216	F-10-071675	4217900000		103		AXELROD 2-3	PANHANDLE-GRAY COUNTY	1440.0	CITIES SERVICE CO
-LAEL INC				RECEIVED:	09/02/83	JA: TX			
8354278	F-10-071931	4248300000		103		CHARLES #2	PANHANDLE	46.1	HIGH PLAINS NATUR
-LANDMARK EXPLORATION INC				RECEIVED:	09/02/83	JA: TX			
8354119	F-03-069756	4205100000		102-2		ALFRED SCHMIDT	CALDWELL (AUSTIN CHAL	100.0	CLAJON GAS CO
-LYRIC ENERGY INC				RECEIVED:	09/02/83	JA: TX			
8354222	F-10-071811	4234130870		103		BURGESS #2	PANHANDLE MOORE	0.0	PHILLIPS PETROLEU
8354223	F-10-071812	4234130918		103		BURGESS #3	PANHANDLE MOORE	0.0	PHILLIPS PETROLEU
8354243	F-10-071856	4234130945		103		BURGESS #4	PANHANDLE MOORE	0.0	PHILLIPS PETROLEU
-MALOUF ABRAHAM CO INC.				RECEIVED:	09/02/83	JA: TX			
8354168	F-10-071218	4235731367		102-4		BEAGLE #1	RICKS (MORROW UPPER)	0.0	AMERICAN PIPELINE
-MARK PRODUCING INC				RECEIVED:	09/02/83	JA: TX			
8354106	F-06-069196	4240131555		102-4		ROSS GAS UNIT #1 WELL #1	MOUNT ENTERPRISE E (L	200.0	
-MATZINGER PETROLEUM CO				RECEIVED:	09/02/83	JA: TX			
8354160	F-03-071142	4235100000		103		HARTBURG LUMBER CO #1	GIST WALDEN FIELD	100.0	TEXAS EASTERN TRA
-MCCLYMOND BROTHERS				RECEIVED:	09/02/83	JA: TX			
8354212	F-7B-071602	4242933334		103		ELLIS-FARMER "A" 105614	FRANK DOSS DUTTER	72.0	DELHI GAS PIPELIN
-MCMURREY PETROLEUM INC				RECEIVED:	09/02/83	JA: TX			
8354143	F-03-070770	4204130927		102-4	103	BOWIE #1 RRC PERMIT NO 191613	BRYAN	0.0	VANGUARD PIPELINE
-MCZ INC				RECEIVED:	09/02/83	JA: TX			
8354224	F-03-071816	4204100000		102-2		GOODMAN #1-L	KURTEN (BUDA)	60.0	FERGUSON CROSSING
8354225	F-03-071817	4204100000		102-2		GOODMAN #1-U	BRYAN (WOODBINE)	270.0	FERGUSON CROSSING
-MEWBOURNE OIL COMPANY				RECEIVED:	09/02/83	JA: TX			
8354103	F-06-069023	4240130693		103		CRIM #2 ID # N/A	HENDERSON	0.0	UNITED GAS PIPELI
8354030	F-10-61370	4235731004		107-TF		HARDY #4 RRC ID #04617	BULER NORTH (CLEVELAN	7.0	TRANSWESTERN PIPE
8354120	F-10-069800	4235730932		103	107-TF	JUDICE #2 RRC # N/A	BULER NORTH (CLEVELAN	0.0	TRANSWESTERN PIPE
8354105	F-10-069169	4229531229		102-4	103	LITTLE #1 RRC ID # N/A	SKUNK CREEK (CLEVELAN	0.0	TRANSWESTERN PIPE
8354105	F-10-069169	4229531229		107-TF		LITTLE #1 RRC ID # N/A	SKUNK CREEK (CLEVELAN	0.0	TRANSWESTERN PIPE
8354075	F-10-68268	4229530683		103	107-TF	PEERY #3 ID #05161	PEERY (CLEVELAND)	0.0	TRANSWESTERN PIPE
8354142	F-10-070740	4229530720		103	107-TF	PEERY #5 RRC ID # N/A	PEERY (CLEVELAND)	0.0	TRANSWESTERN PIPE
8354077	F-10-068358	4229530608		102-4	103	PRICE #1 I D #N/A	SKUNK CREEK (CLEVELAN	44.0	TRANSWESTERN PIPE
8354077	F-10-068358	4229530608		107-TF		PRICE #1 I D #N/A	SKUNK CREEK (CLEVELAN	44.0	TRANSWESTERN PIPE
8354024	F-10-068376	4229530669		107-TF		PUNDT #1 ID #05567	LIPSCOMB S W (CLEVELA	96.0	NORTHERN NATURAL
8354058	F-10-67245	4229531173		107-TF		SCHULTZ "716" #3 RRC ID #05323	SKUNK CREEK (CLEVELAN	4.0	TRANSWESTERN PIPE
-MICHEL T HALBOUTY ENERGY CO				RECEIVED:	09/02/83	JA: TX			
8354197	F-06-071548	4245930558		103	107-TF	GLADEWATER UNIT #1	GLADEWATER	787.0	NOT DETERMINED
-MIRANDO CO				RECEIVED:	09/02/83	JA: TX			
8354217	F-04-071750	4224700000		108		ARMOUR LEE H FULBRIGHT #1 010813	HENNE-WINCH-FARRIS (2	18.0	UNITED TEXAS TRAN
8354218	F-04-071751	4224700000		108		ARMOUR LEE H FULBRIGHT #2 103853	HENNE-WINCH-FARRIS (2	18.0	UNITED TEXAS TRAN
-MITCHELL ENERGY CORPORATION				RECEIVED:	09/02/83	JA: TX			
8354209	F-09-071568	4249732529		103		J M ROBINSON "A" #3-U	BOONSVILLE (CADDO CON	21.6	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	09/02/83	JA: TX			
8354129	F-04-070476	4224900000		108		C F H BLUCHER B #3	LOHMAN DEEP (BSD)	0.0	NATURAL GAS PIPEL
8354228	F-8A-071820	4221933793		103		NORTH CENTRAL LEVELLAND UNIT #377	LEVELLAND	11.0	AMOCO PRODUCTION
8354267	F-8A-071906	4221933792		103		NORTH CENTRAL LEVELLAND UNIT #378	LEVELLAND	18.6	AMOCO PRODUCTION
8354229	F-8A-071821	4221935762		103		NORTH CENTRAL LEVELLAND UNIT #381	LEVELLAND	8.4	AMOCO PRODUCTION
8354266	F-08-071905	4230130409		102-4		W D JOHNSON ET AL E #8	DIMMIT (CHERRY CANYON	36.0	INTRATEX GAS CO
8354265	F-08-071904	4230130411		102-4		W D JOHNSON F #7	DIMMIT (CHERRY CANYON	26.6	INTRATEX GAS CO
-MOORE MCCORMACK OIL & GAS CORP				RECEIVED:	09/02/83	JA: TX			
8354136	F-06-070580	4222530466		102-4		A. E. MURRAY #2	REYNARD (PETITT)	730.0	ESPERANZA ENERGY
-MORGAS				RECEIVED:	09/02/83	JA: TX			
8354262	F-10-071895	4248300000		103		SHERIA ID #105933	PANHANDLE EAST	24.0	TRANSWESTERN PIPE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MORROW RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354195	F-7C-071524	4232730396		102-2	103	CALLAN #2	WILDCAT	72.5	CIBOLO GAS INC
-MR OIL CO				RECEIVED:	09/02/83	JA: TX			
8354300	F-08-072009	4249532854		103		DORR #20 #25917	WARD SOUTH	10.0	DELHI GAS PIPELIN
-NATURAL GAS ANADARKO INC				RECEIVED:	09/02/83	JA: TX			
8354176	F-10-071375	4239330824		102-4		LEDRICK #2-7	LEDRICK RANCH (GRANIT	36.0	TRANSWESTERN PIPE
8354255	F-10-071887	4237531026		107-TF		MATILDA #1-49	ELLIS RANCH (CLEVELAN	220.0	NORTHERN NATURAL
8354256	F-10-071888	4229531177		107-TF		SELL 1-588	NORTHRUP (CLEVELAND)	145.0	TRANSWESTERN PIPE
8354260	F-10-071892	4235731184		102-TF		V W RICHARDSON 1-46	ELLIS RANCH (CLEVELAN	300.0	TRANSWESTERN PIPE
-NATURAL RESOURCES CORP				RECEIVED:	09/02/83	JA: TX			
8354049	F-03-66466	4208931312		103		PRIESMEYER-POOLE UNIT 2 WELL #1	EAST RAMSEY	0.0	AMOCO PRODUCTION
-NEUMIN PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354060	F-02-67265	4229700000		102-4	103	HARRY L HINTON UNIT #2	OAKVILLE E (WILCOX 77	144.0	ALUMINUM CO OF AM
8354121	F-02-069809	4205731219		103		STATE TRACT 177 WELL #4-F	STEAMBOAT PASS	206.0	ALUMINUM CO OF AM
8354122	F-02-069810	4205731212		103		STATE TRACT 177 WELL 4-D	STEAMBOAT PASS	174.0	ALUMINUM CO OF AM
-NORTHRIDGE OIL CO				RECEIVED:	09/02/83	JA: TX			
8354174	F-09-071348	4207732970		103		LUTHER DEWEBER #1	LEDA CONGLOMERATE	100.0	TUFCO
-O I L ENERGY INC				RECEIVED:	09/02/83	JA: TX			
8354027	F-7C-58453	4210534025		103		BATT'S FRIEND 1	WHITEHEAD (STRAWN)	90.0	VALERO TRANSMISSI
-OIL & GAS RESERVES INC				RECEIVED:	09/02/83	JA: TX			
8354128	F-02-070468	4217531737		102-4		THOMAS VOELKEL #2	MARSHALL EAST (5460 C	100.0	LIBRA ENERGIES, I
-P & R OIL INC				RECEIVED:	09/02/83	JA: TX			
8354169	F-7B-071221	4213334577		102-4		WHITE #3	LEE RAY (DUFFER LIME	91.0	LONE STAR GAS CO
-PANSTAR OIL & GAS INC				RECEIVED:	09/02/83	JA: TX			
8354215	F-10-071672	4217931357		103		MAUL #1	PANHANDLE GRAY	70.0	CABOT PIPELINE CO
-PENN RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354138	F-05-070620	4228900000		102-4	103	CRANE #1	BRANTON	500.0	
8354138	F-05-070620	4228900000		107-TF		CRANE #1	BRANTON	500.0	
-PENNZOIL PRODUCING COMPANY				RECEIVED:	09/02/83	JA: TX			
8354140	F-04-070718	4235532121		102-4		HELEN P. AUSTIN #4-F	AQUA DULCE (8,300'S.)	122.0	UNITED GAS PIPELI
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	09/02/83	JA: TX			
8354248	F-08-071875	4210332348		108		(20098) TUBB-D #6	SAND HILLS (JUDKINS)	14.0	WARREN PETROLEUM
8354249	F-08-071876	4249503395		108		(23074) BASH #1	KEYSTONE (COLBY)	0.3	SID RICHARDSON GA
-PHYLKO ENERGY CORP				RECEIVED:	09/02/83	JA: TX			
8354148	F-02-070906	4223931809		102-4		VELMA ROBINSON #1 102318	COLLIER NORTH	91.0	HOUSTON PIPE LINE
-PRECISION DRILLING CO INC				RECEIVED:	09/02/83	JA: TX			
8354276	F-7B-071920	4208333382		103		HARDY BLUE 08673	COLEMAN COUNTY REGULA	30.0	LONE STAR GAS CO
-R A W ENERGY CORP				RECEIVED:	09/02/83	JA: TX			
8354139	F-7B-070709	4236732498		102-4		MASK #1	GARNER NW (4200)	200.0	SOUTHWESTERN GAS
8354040	F-7B-65836	4236732376		102-4		WARD #2	KUZELL (CONGLOMERATE)	200.0	EMPIRE PIPELINE C
-RANGER OIL CO				RECEIVED:	09/02/83	JA: TX			
8354294	F-03-071964	4201530393		102-4		GRAF #1-105825	SEALY (WILCOX L)	60.0	UNITED TEXAS TRAN
-RIDGE OIL CO				RECEIVED:	09/02/83	JA: TX			
8354167	F-7B-071209	4213334877		102-4	103	LONGMIRE #1	RANGER (BLACK LIME WE	82.8	COMPRESSOR RENTAL
-ROBERT M WYNNE				RECEIVED:	09/02/83	JA: TX			
8354166	F-7C-071197	4210500000		103		UNIVERSITY #3	BLOCK 47 (SHALLOW)	438.0	BIG LAKE GASOLINE
-ROBERTS & HAMMACK INC				RECEIVED:	09/02/83	JA: TX			
8354043	F-7C-66387	4246131944		103		ELKIN 10212	CALVIN (DEAN)	60.0	PHILLIPS PETROLEU
-ROSS PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354052	F-03-66741	4208931347		102-4		W. N. LEHRER #1	EASTERN N (2000)	73.0	H G I CORP
-S K ROGERS OIL CO				RECEIVED:	09/02/83	JA: TX			
8354283	F-8A-071944	4221933865		103		DELOACHE "A" #4	LEVELLAND	15.0	AMOCO PRODUCTION
8354284	F-8A-071945	4221933864		103		NEAL #5	LEVELLAND	6.0	AMOCO PRODUCTION
-SAGE ENERGY CO				RECEIVED:	09/02/83	JA: TX			
8354100	F-03-68860	4214931503		102-2		AIRPORT "A" #1 RRC #16501	GIDDINGS (AUSTIN CHAL	22.5	PHILLIPS PETROLEU
8354116	F-03-069598	4214931513		102-2		CALIBAN #1 RRC #16613	GIDDINGS (AUSTIN CHAL	11.7	PHILLIPS PETROLEU
8354115	F-03-069597	4214931495		102-2		IVY "A" #1 RRC #16677	GIDDINGS (AUSTIN CHAL	9.0	PHILLIPS PETROLEU
8354069	F-03-67896	4214931498		102-2		RICHTMER #1 RRC #16502	GIDDINGS (AUSTIN CHAL	13.5	PHILLIPS PETROLEU
8354068	F-03-67895	4214931496		102-2	103	RUSCHER #1 RRC #16513	GIDDINGS (AUSTIN CHAL	5.4	PHILLIPS PETROLEU
8354041	F-03-65957	4214931484		102-2		SYLER "A" #1 RRC #16427	GIDDINGS (BUDA)	22.5	PHILLIPS PETROLEU
8354158	F-03-071101	4214931524		102-2		TCB UNIT #1 RRC #	GIDDINGS (AUSTIN CHAL	13.5	PHILLIPS PETROLEU
8354157	F-7C-071100	4238332511		103		UNIVERSITY 13-G #7 RRC #09558	FARMER (SAN ANDRES)	1.1	NORTHERN NATURAL
-SCANDRILL INC				RECEIVED:	09/02/83	JA: TX			
8354210	F-09-071592	4223735106		103		W L RICHARDS #11	BRYSON EAST	9.1	LONE STAR GAS CO
-SHAR-ALAN OIL CO				RECEIVED:	09/02/83	JA: TX			
8354118	F-03-069657	4231330433		102-4		CLORISE BARR #2	MADISONVILLE NE (GEOR	0.0	LONE STAR GAS CO
-SHAWNEE PETROLEUM CORP				RECEIVED:	09/02/83	JA: TX			
8354037	F-03-65015	4205132190		102-2		WHITENER "R" #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-SHELL OIL CO				RECEIVED:	09/02/83	JA: TX			
8354044	F-04-66405	4242731364		103		JUDD ESTATE-STATE #8	LACOPITA (VICKSBURG W	300.0	TENNESSEE GAS PIP
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	09/02/83	JA: TX			
8354302	F-08-072013	4246132016		103		DAMRON "192-A" #4	MCELROY	6.0	PHILLIPS PETROLEU
8354301	F-08-072012	4246132013		103		DAMRON "192-B" #4	MCELROY	7.0	PHILLIPS PETROLEU
8354153	F-06-070963	4222530390		102-4		L W HUFFMAN #5	TRINITY	0.4	
8354303	F-08-072014	4213534120		103		D B HOLT A/C 2 #24	COWDEN NORTH	6.0	AMOCO PRODUCTION
8354033	F-08-63028	4208333276		103		D.B. HOLT A/C-2 #23	COWDEN NORTH	14.0	AMOCO PRODUCTION
8354219	F-08-071768	4213500000		108		PAUL MOSS UNIT #59	COWDEN SOUTH	0.1	EL PASO HYDROCARB
-SUPERIOR OIL CO				RECEIVED:	09/02/83	JA: TX			
8354076	F-02-68333	4228531708		103	107-TF	D A PALRANG GAS UNIT #2	NOT APPLICABLE	1.2	UNITED TEXAS TRAN
-TELSTAR CORP				RECEIVED:	09/02/83	JA: TX			
8354162	F-7B-071166	4236732492		102-4		THOMAS #1 ID APPLIED FOR	DENNIS WEST (STRAWN)	120.0	TEXAS UTILITIES F
-TEXACO INC				RECEIVED:	09/02/83	JA: TX			
8354083	F-8A-068427	4203300000		108		JO MILL UNIT #3412	JO MILL (SPRABERRY)	4.5	GETTY OIL CO
8354057	F-08-67219	4243131295		103		R. E. GLASS #3	CONGER (PENN)	330.3	VALERO TRANSMISSI
8354113	F-8A-69532	4250132274		103		ROBERTS UNIT #2203	WASSON	9.9	SHELL OIL CO
8354067	F-8A-067870	4250132280		103		ROBERTS UNIT #2445	WASSON	20.8	SHELL OIL CO
8354046	F-8A-066518	4250132279		103		ROBERTS UNIT #3328	WASSON	37.2	SHELL OIL CO
8354086	F-08-068500	4210300000		108		STATE OF TEXAS "DW" #10	DUNE	0.5	PHILLIPS PETROLEU
8354085	F-08-068499	4210300000		108		STATE OF TEXAS "DW" #11	DUNE	1.7	PHILLIPS PETROLEU
8354084	F-08-068498	4210300000		108		STATE OF TEXAS "DW" #12	DUNE	2.5	PHILLIPS PETROLEU
8354091	F-08-68505	4210300000		108		STATE OF TEXAS "DW" #16	DUNE	4.8	PHILLIPS PETROLEU
8354087	F-08-068501	4210300000		108		STATE OF TEXAS "DW" #2	DUNE	2.6	PHILLIPS PETROLEU
8354088	F-08-068502	4210300000		108		STATE OF TEXAS "DW" #3	DUNE	1.9	PHILLIPS PETROLEU
8354089	F-08-068503	4210300000		108		STATE OF TEXAS "DW" #4	DUNE	1.2	PHILLIPS PETROLEU
8354090	F-08-068504	4210300000		108		STATE OF TEXAS "DW" #5	DUNE	0.5	PHILLIPS PETROLEU
8354093	F-08-068507	4210300000		108		STATE OF TEXAS "DW" #6	DUNE	0.5	PHILLIPS PETROLEU
8354092	F-08-068506	4210300000		108		STATE OF TEXAS "DW" #8	DUNE	1.6	PHILLIPS PETROLEU
8354099	F-8A-068854	4216532520		103		WHARTON UNIT #115	HARRIS	16.8	PHILLIPS PETROLEU
8354114	F-8A-069538	4216532552		103		WHARTON UNIT #117	HARRIS	18.3	PHILLIPS PETROLEU
8354066	F-8A-67866	4216532521		103		WHARTON UNIT #118	HARRIS	0.0	PHILLIPS PETROLEU
8354111	F-8A-69500	4216532524		103		WHARTON UNIT #121	HARRIS	4.2	PHILLIPS PETROLEU
8354112	F-8A-69531	4216532548		103		WHARTON UNIT #122	HARRIS	24.8	PHILLIPS PETROLEU
8354078	F-8A-068377	4216532555		103		WHARTON UNIT #127	HARRIS	20.4	PHILLIPS PETROLEU
8354123	F-8A-070058	4216532551		103		WHARTON UNIT #129	HARRIS	0.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8354056	F-08-67205	4232931142		102-4		ZULA B. WYLIE "C" #2	BRADFORD RANCH	397.5	EL PASO NATURAL G
-TOM BROWN INC				RECEIVED:	09/02/83	JA: TX			
8354182	F-7C-071433	4243532960		103	107-TF	HILL-EDWIN S MAYER "CC" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8354141	F-7C-070738	4243532930		103	107-TF	HILL-JOE M. VANDERSTUCKEN #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8354184	F-7C-071435	4243532913		103	107-TF	HILL-MINNIE H MAYER "A" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8354183	F-7C-071434	4243532954		103	107-TF	HILL-MINNIE H MAYER "C" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8354181	F-7C-071432	4243532947		103	107-TF	HILL-RANDEE FAWCETT "E" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8354185	F-7C-071436	4243532963		103	107-TF	HILL-RANDEE FAWCETT TRUST "A" #2	SAWYER (CANYON)	73.0	LONE STAR GAS CO
-TOM F MARSH INC				RECEIVED:	09/02/83	JA: TX			
8354031	F-10-62098	4248300000		102-4		GILL 1-96	CANDICE (MORROW)	730.0	
-TRI-SERVICE DRILLING CO				RECEIVED:	09/02/83	JA: TX			
8354207	F-7C-071560	4238330037		108		ROCKER "B" #100	SPRABERRY TREND (SPRA	7.3	UNION TEXAS PETRO
8354206	F-7C-071559	4238330030		108		ROCKER "B" #101	SPRABERRY TREND (SPRA	4.8	UNION TEXAS PETRO
8354205	F-7C-071558	4238330079		108		ROCKER "B" #112	SPRABERRY TREND (SPRA	6.9	UNION TEXAS PETRO
8354204	F-7C-071557	4238330094		108		ROCKER "B" #115	SPRABERRY TREND (SPRA	4.8	UNION TEXAS PETRO
8354199	F-7C-071552	4238330031		108		ROCKER "B" #59	SPRABERRY TREND (SPRA	8.7	UNION TEXAS PETRO
8354200	F-7C-071553	4238330097		108		ROCKER "B" #64	SPRABERRY TREND (SPRA	8.7	UNION TEXAS PETRO
8354208	F-7C-071561	4238330025		108		ROCKER "B" #72	SPRABERRY TREND (SPRA	6.8	UNION TEXAS PETRO
8354203	F-7C-071556	4238330073		108		ROCKER "B" #95	SPRABERRY TREND (SPRA	4.5	UNION TEXAS PETRO
8354202	F-7C-071555	4238330074		108		ROCKER "B" #96	SPRABERRY TREND (SPRA	11.7	UNION TEXAS PETRO
8354201	F-7C-071554	4238230096		108		ROCKER "B" #99	SPRABERRY TREND (SPRA	4.2	UNION TEXAS PETRO
-TRINITY RESOURCES INC				RECEIVED:	09/02/83	JA: TX			
8354053	F-02-66863	4223931848		102-4		E CANERDAY #2-C	PALMETTO BEND W (B-3)	128.0	LONE STAR GAS CO
-TXO PRODUCTION CORP				RECEIVED:	09/02/83	JA: TX			
8354032	F-02-62672	4217500000		103		MAINKA 1	BRANDT (RECKLAW)	0.0	TEXAS EASTERN TRA
8354054	F-03-66882	4208900000		102-4		MATTHEWS E-3	WYLIE (WYLIE)	0.0	UNITED GAS PIPELI
8354070	F-02-67902	4228500000		102-4		MITCHELL E-4	SPEAKS S W (3590')	0.0	HOUSTON PIPE LINE
8354042	F-03-66213	4232100000		107-PE		PIERCE ESTATE A-1 RRC ID #048851	DUNCAN SLOUGH S (FRIO	0.0	DELHI GAS PIPELIN
-UNION OIL COMPANY OF CALIF				RECEIVED:	09/02/83	JA: TX			
8354064	F-08-67507	4247500000		108		F G SMITH "A" #1	NOT APPLICABLE	5.0	WARREN PETROLEUM
8354038	F-08-65425	4213534070		103		MOSS UNIT #17-3A	NOT APPLICABLE	5.0	ODESSA NATURAL CO
8354059	F-8A-67248	4216532448		103		NORTH RILEY UNIT #18-R	RILEY NORTH	3.0	PHILLIPS PETROLEU
-USEMCO INC				RECEIVED:	09/02/83	JA: TX			
8354194	F-7B-071518	4236732396		103		WHITE #1	POOLVILLE SW (CONGL 4	105.0	LONE STAR GAS CO
-VENUS OIL COMPANY				RECEIVED:	09/02/83	JA: TX			
8354117	F-03-069646	4248100000		102-4		KUBELA MINERAL TRUST #1	HUTCHINS-KUBELA	0.0	DOW CHEMICAL CO
8354063	F-03-67502	4248100000		102-4		MOLLNAR #2	HUTCHINS S W	0.0	DOW CHEMICAL CO
-WAGNER & BROWN				RECEIVED:	09/02/83	JA: TX			
8354277	F-08-071927	4243131318		103		GLASS "E" #6-36	CONGER (PENN)	40.5	TEXAS UTILITIES F
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	09/02/83	JA: TX			
8354268	F-08-071907	4210333161		103		J B TUBB "B" #59	SAND HILLS (MCKNIGHT)	0.0	EL PASO NATURAL G
-WARRIOR OIL & GAS CORP				RECEIVED:	09/02/83	JA: TX			
8354081	F-02-68446	4246900000		102-4		M F JANSSEN #2-A	NURSERY SE (1160)	36.0	CJW CORP
8354080	F-02-68445	4246900000		102-4		M F JANSSEN #3-A	NURSERY S (1350)	50.0	CJW CORP
-WCS PETROLEUM CO				RECEIVED:	09/02/83	JA: TX			
8354074	F-03-68169	4228730737		102-2		RIVERS UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	PERRY PIPELINE CO
-WESTERN CHIEF OIL & GAS CO				RECEIVED:	09/02/83	JA: TX			
8354104	F-09-069094	4223734956		102-4	103	BRICE #1	NEGOTIATING	0.0	TEXAS UTILITIES F
-WINN EXPLORATION/DULCE CO				RECEIVED:	09/02/83	JA: TX			
8354108	F-01-069212	4250731801		102-4		PRYOR RANCH #129	WINN-DULCE	0.0	NORTHERN NATURAL
8354065	F-01-67575	4250731836		102-4		PRYOR RANCH #141-T	WINN-DULCE	0.0	NORTHERN NATURAL
8354050	F-01-66727	4250731846		102-4		PRYOR RANCH #151-C	WINN-DULCE	0.0	NORTHERN NATURAL
8354049	F-01-66726	4250731846		102-4		PRYOR RANCH #151-T	WINN-DULCE	0.0	NORTHERN NATURAL
8354051	F-01-66728	4250731861		102-4		PRYOR RANCH #153-T	WINN-DULCE	0.0	NORTHERN NATURAL
8354098	F-01-68834	4250731944		102-4		PRYOR RANCH #177-C	WINN-DULCE	0.0	NORTHERN NATURAL
8354097	F-01-68833	4250731944		102-4		PRYOR RANCH #177-T	WINN-DULCE	0.0	NORTHERN NATURAL
8354107	F-01-069203	4250731905		102-4		PRYOR RANCH #186	WINN-DULCE	0.0	VALERO TRANSMISSI
-WOOD & LOCKER INC				RECEIVED:	09/02/83	JA: TX			
8354165	F-08-071192	4217331389		102-4		ZANT 38 #2	NUTT (LOWER WOLFCAMP)	55.0	PHILLIPS PETROLEU
-WOOLEY PETROLEUM				RECEIVED:	09/02/83	JA: TX			
8354177	F-09-071376	4249732547		103		W G GREEN #1-A	ALVORD SOUTH (ATOKA)	0.0	TEXAS UTILITIES F

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federal register

Wednesday
September 28, 1983

Part VII

Department of Health and Human Services

Office of Human Development Services

Head Start Projects; Possible Availability of Financial Assistance

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13.600-841]

Head Start Projects; Possible Availability of Financial Assistance

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of possible financial assistance to establish or expand Head Start projects.

SUMMARY: The Administration for Children, Youth, and Families (ACYF) announces that competing applications will be accepted to establish new Head Start projects or to expand enrollment in current Head Start projects.

Conferences at which the questions of prospective applicants will be answered will be held late in October in ten cities. See Section M below for details.

DATE: The closing date for receipt of applications is December 16, 1983.

A. Scope of this Program Announcement

This announcement solicits applications from local public and private non-profit organizations that wish to compete for grants that may be available in Fiscal Year 1984 to establish new Head Start Programs or, for agencies that already operate Head Start programs, for increased funds to expand their enrollment.

The Fiscal Year 1984 budget request for Head Start proposes that $64,100,000 be used to expand enrollment. This request is under consideration by the Congress and, as of the date of this announcement, no decision has been made to fund the proposed expansion in enrollment. Grant applications are being solicited now so that the competitive process for selecting projects can be completed and additional children and families can begin receiving services as early as possible in Fiscal Year 1984, should funds become available.

The goals of the expansion effort are:

- To provide Head Start services to as many additional children as possible, while ensuring that at least 29,100 additional children are served nationally.
- To serve children and families through innovative, cost-effective projects that provide good quality, comprehensive child development services.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of school attendance, and their families. To aid enrolled children to obtain their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 400,000 children through a network of more than 1200 grantees.

While Head Start is targeted primarily on low-income children whose families have incomes below the poverty line or are eligible for public assistance, ACYF policy permits up to 10 percent of the Head Start children in local programs to be from families who do meet these low income critiera. (Local agencies operating Head Start projects may be providing other children with services that are similar or identical to those provided by Head Start, but that are not supported by Head Start funds. These non-Head Start supported children would not be counted against the 10 percent allowance for over-income children). Head Start legislation also requires that a minimum of 10 percent of enrollment opportunities be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

C. Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act of 1981 (Section 635 et seq. of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35). The relevant regulations are:

- 45 CFR Part 1301, Head Start Grant Administration.
- 45 CFR Part 1302, Policies and Procedures for Selection.
- 45 CFR Part 1303, Procedures for Appeal for Head Start Agencies.
- 45 CFR Part 1304, Performance standards.
- 45 CFR Part 1305, Eligibility.
- 45 CFR Part 74, Grants Administration.

D. Eligible Applicants

Any local public or private non-proft agency or organization, including an existing Head Start grantee, is eligible to apply for funding to establish a new Head Start project or, in the case of existing Head Start grantees, to expand a current project. Applicants may propose serving children in communities where no Head Start project exists or they may propose serving additional children in communities where some children are already being served by Head Start but a need exists for additional children to be served.

Eligibility for funding to provide Head Start services to children living on Federally recognized Indian reservations or in Alaskan Native villages is restricted to applicants that are governing bodies of an Indian tribe or Alaskan Native village, or that are the designated representatives of these bodies.

To be eligible for funding, all applicants must meet the requirements of 45 CFR 1302.1-1302.2 which require evidence of applicant's legal status and financial viability. Copies of the most relevant regulations will be included in the application kit discussed in Section L of this announcement.

E. Available Funds

The Fiscal Year 1984 budget request for Head Start proposes that $64,100,000 be used to expand Head Start enrollment. Assuming that these funds become available to ACYF and that acceptable applications are received, ACYF expects to award all of these funds to successful applicants responding to this announcement.

The table below shows the minimum amount of funds ACYF estimates will be alloted for expansion in each State and for Indian and migrant projects. These minimum levels total $59,100,000. The distribution of expansion funds among the States is based on the allotment formula contained in Section 640(a) of the Head Start Act. The estimated amounts include the mandatory allotments required by the statute plus funds from the Secretary's reserve portion of the Head Start budget which have been distributed by using the population factors contained in the statutory formula.

Not included in these levels is $5,000,000 in discretionary funds from the Secretary's reserve. This money will be used to fund projects that are especially worthy in relation to the competitive criteria but are in States or Indian or migrant communities where the allotted amounts are insufficient to support them.

Successful applicants from the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands would also be funded from this discretionary fund. Funding amounts for these areas will be determined based on demonstrated need and the merits of applications received.

Region	Estimated minimum funds for expansion in fiscal year 1984
I:	
Connecticut	$245,013
Maine	211,272
Massachusetts	618,033
New Hampshire	127,560
Rhode Island	197,625
Vermont	82,027
II:	
New Jersey	1,785,588
New York	5,850,369
Puerto Rico	3,367,101
III:	
Delaware	174,389
District of Columbia	264,273
Maryland	917,267
Pennsylvania	2,591,869
Virginia	843,992
West Virginia	255,827
IV:	
Alabama	1,082,449
Florida	2,400,776
Georgia	1,591,532
Kentucky	460,240
Mississippi	473,583
North Carolina	559,069
South Carolina	735,850
Tennessee	937,829
V:	
Illinois	2,053,872
Indiana	1,235,596
Michigan	3,044,255
Minnesota	754,875
Ohio	2,406,745
Wisconsin	1,082,695
VI:	
Arkansas	733,530
Louisiana	1,688,772
New Mexico	494,791
Oklahoma	374,209
Texas	3,939,310
VII:	
Iowa	658,606
Kansas	496,018
Missouri	850,537
Nebraska	310,760
VIII:	
Colorado	207,518
Montana	169,067
North Dakota	149,790
South Dakota	222,998
Utah	428,463
Wyoming	24,017
IX:	
Arizona	544,034
California	7,169,974
Hawaii	291,580
Nevada	115,212
X:	
Alaska	39,531
Idaho	264,782
Oregon	560,328
Washington	948,423
Indian and Migrant Projects	2,110,000
Discretionary Funds from Secretary's reserve	$5,000,000
Total for Expansion	64,100,000

When the Head Start appropriation for Fiscal Year 1984 is determined, ACYF will publish in the **Federal Register** the actual funding allotments available for each State and for other projects.

F. Grantee Share of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. The non-Federal share may be in cash or in kind, fairly evaluated, including facilities, equipment, or volunteer services.

G. Criteria for Competitive Review

All applications that meet the deadline for submission will be reviewed and evaluated competitively against the following criteria:

1) *Innovativeness (10 points)*

This criterion will measure the degree to which the applicant proposes innovative and effective ways of providing Head Start services to children, families and communities. Examples of innovative projects which might be supported are:

- Employment based Head Start programs which would augment existing day care programs to provide or arrange for comprehensive services in cooperation with businesses and industries. This would enable Head Start eligible children to be served while their parents receive job training leading to subsequent employment.
- Collaborative ventures with agencies that provide services to preschool children. This effort could build on a core of services already being provided to Head Start eligible children through other agencies and supplement or expand these services to achieve the comprehensive program required by Head Start.
- Head Start satellites which could expand Head Start enrollment by linking Head Start centers to a number of satellite homes in which small groups of Head Start children would be served, either in full day or part day programs.
- Innovative approaches to increase enrollment and services for children with special needs. These might include Native American children, refugee children, children of migrant or seasonal farmworker families, special needs children available for adoption, children identified at risk of abuse or neglect, or other vulnerable minority groups.
- Innovative approaches that maximize parental involvement to produce lasting effects in fostering child development in families, for both Head Start enrollees and their siblings.
- Collaboration with other child care providers in which, for example, Head Start might purchase slots or services in such programs for Head Start eligible children.

Applicants should not limit their proposals to these examples. ACYF encourages applicants to propose other types of innovative projects that rely on new and effective ways of providing Head Start services.

2) *Program Design (15 points)*

This criterion will assess how well the services to be provided by the proposed program meets the needs of children, families and communities. This includes the extent to which the proposed program:

- Serves families and children who have the most serious need for Head Start services (perhaps the very poorest families or adolescent or single parents and their children) or those for whom the program might have the greatest impact (perhaps eligible parents in job training who could become economically self-sufficient), and;
- Is available and responsive to the needs of the communities and groups to be served. This would include elements such as establishing appropriate service hours, selecting convenient locations, and providing appropriate transportation.

In proposing a program design, applicants must adhere to Head Start regulations concerning program options (Appendix A to the Head Start Performance Standards—45 CFR Part 1304). Attention should be paid to the special provisions which must be met when applicants propose operating a design other than the Standard Head Start Model, as described in Appendix A of the Head Start Performance Standards.

Applicants should give priority to serving children for whom public school or other comprehensive developmental services are not available. For example, it is not expected that applicants would propose serving five-year-old children in communities where kindergarten is available for these children.

To allow as many different children as possible to participate in Head Start, applicants that propose serving a group of children for one year will normally be scored higher for this criterion than those that propose serving the same group of children for more than one year. However, there are situations where multiple years of service may be necessary to meet the special needs of individual children, families or communities. Applicants that propose providing multiple years of service to the same children must justify the need for doing so. Their applications will be weighed against the benefits of other projects that might reach more individual children.

3) *Program Quality (20 points)*

This criterion will measure the extent to which the application shows a capacity and an intent to provide Head Start services which fully meet the Head

Start Program Performance Standards (45 CFR Part 1304) and other Head Start regulations. This includes the provisions made for the direct participation of parents in the planning, conduct and administration of the program, provisions to adequately serve at least 10 percent handicapped children in a "mainstream" setting, the suitability and availability of facilities and equipment proposed to be utilized in carrying out the Head Start program, and provisions to develop and manage training and technical assistance activities which are adequate to meet the needs of the proposed program. (Costs for the support of training and technical assistance activities should be included in applicants' proposed budgets.)

In addition, to showing how they plan to meet these regulatory requirements, applicants must justify that the levels of staffing they propose are conducive to sound child development. In developing staffing patterns, applicants should consider the ages and special needs, such as handicapping conditions, of the children they propose to serve. ACYF policies require that Head Start projects have no more than 20 children enrolled in each class.

(4) *Experience and Capability (20 Points)*

This criterion will measure the qualifications and experience of the applicant agency and staff in planning, organizing, and providing comprehensive child development services at the community level. This would include: the applicant's potential, based on experience, for administering the program effectively and for exercising sound fiscal management; the extent of involvement of parents and other community members and organizations in the development and planning of the application; the degree of support evidenced from relevant community organizations, service providers and community members; the extent to which classroom teachers to be hired have received appropriate training or have experience in early childhood education; the extent to which staff will be hired whose ethnic or racial backgrounds are reflective of the communities being served, the opportunities to be provided for employment of residents from the service area, and career development and training opportunities for paraprofessional and other staff and; the adequacy of plans to begin providing new services in a timely manner.

(5) *Cost Efficiency (20 points)*

This criterion will measure the cost of services in terms of ACYF Head Start funds to determine which applicants can operate most efficiently and thereby provide the most services to children. The adequacy and reasonableness of proposed budgets will also be assessed.

(a) Fifteen points under this criterion will be based on the cost of proposed projects in terms of Federal Head Start dollars for: the on-going annual cost per child; the on-going hourly cost per child; and the cost per child for any one-time start-up expenses, such as the purchase of equipment, the renovation of facilities, or initial training and technical assistance activities. Applicants will compute these costs as part of their budget submissions. Points will be assigned by ranking the costs proposed by each applicant against those proposed by other applicants from the same State. Similarly, the costs of an Indian project will be compared to those of other Indian projects and a migrant project's costs compared to those of other migrant projects. Applicants that propose the lowest costs will receive the most points and those that propose the highest costs will receive the fewest points.

(b) Five points under this criterion will be based on the degree to which an applicant's requested budget is appropriate to accomplish the program of services proposed. This assessment will consider the adequacy and reasonableness of the applicant's entire budget, including both ACYF and other resources.

6) *The Need for Services (15 points)*

This criterion will measure the need for Head Start services in the community an applicant proposes to serve, compared to the need that exists in other communities in a State. It will help direct new Head Start resources to areas in a State that have the greatest numbers or the highest percentages of unserved children.

(a) Ten points under this criterion will be based on a comparison of the need for Head Start services in different counties in a State. Using nationally consistent 1980 Census data, points will be assigned to each county based on its population of unserved children eligible for Head Start. The points assigned will consider both the absolute number of unserved children in a county and the percentage of eligible children who are unserved in a county. Applicants will receive these points automatically, based on the county in which they propose to operate. (Points for projects in more than one county will be pro-rated based on the number of children to be served in each county.)

This portion of the criterion will not be applied to Indian or migrant projects, or projects in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands. For these projects, the entire 15 points for this criterion will be based on part (b), below.

(b) Five points under this criterion will be determined by the extent to which the applicant proposes to target Head Start services on the towns, districts, or neighborhoods in a county (or other appropriate jurisdiction, such as a Federal Indian reservation) that have the greatest need for services, compared to other areas in a county. Applicants should supply data to show that they propose serving areas that have the largest numbers or highest percentages of unserved children, fewest alternative child care, social service, or medical resources, etc.

H. The Application Process

1. Submission of Applications

Agencies and organizations interested in applying for funds may request application kits from the ACYF official who serves their area (see Appendix A for names and addresses).

In order to be considered for a Head Start grant, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families.

The applications must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in the announcement and the instructions in the application kit.

One signed original and two copies of the grant application, including all attachments, are required. ACYF encourages the submission of an additional four copies to facilitate the review process. Completed applications must be sent to: Head Start Expansion, Office of Human Development Services, Grants & Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201. The program announcement number (13.600–841) must be clearly identified on the application.

2. A–95 Notification Process

All applications are subject to the Project Notication and Review procedures required by OMB Circular A–95, Part I. This circular requires applicants to notify State and areawide A–95 Clearinghouses of their intention

to apply for a grant and, if requested by a Clearinghouse, to submit a copy of the application. Some State and area Clearinghouses provide their own forms on which such information is to be submitted.

Applicants should immediately contact the appropriate State Clearinghouse for information on the A-95 requirements. Applicants which are Federally recognized Indian tribes are not subject to the requirements of the Project Notification and Review procedures. Such applicants may voluntarily participate in this system and are encouraged to do so.

Instructions for meeting these requirements and the names and addresses of State and areawide clearinghouses will be provided in the application kit or applicants should contact the appropriate State Clearinghouse (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A-95 requirements.

I. Priority for Funding

Section 641 of the Head Start Act requires that, in selecting applicants that are to receive expansion funding, priority be given in certain instances to current Head Start grantees who were receiving Head Start funds on August 13, 1981, the date the statute was enacted. An applicant that is a current Head Start grantee would receive priority over a non-Head start applicant in instances where both propose to serve the same community or geographic area and both score comparably in the competitive review (i.e., within 5 points of each other). Before giving such priority, ACYF must determine that the current Head Start grantee is complying with Head Start program and fiscal regulations and requirements.

J. Selection of Successful Applicants

Applications will be scored against the criteria explained above. The review will be conducted in Washington, D.C. Reviewers will be composed of persons knowledgeable about Head Start and early childhood education and develOpment, including parents of Head Start children (from States other than the one being reviewed), Federal staff, and other experts, such as university staff or staff of child development projects.

Once applications have been scored, they will compete with other applications for the State where services will be provided or, in the case of Indian projects or migrant projects, against other Indian or migrant projects. The number of grant awards within each State will depend on the State's allocation and on the number and characteristics of acceptable applications. Applications from the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands will be assessed against the competitive criteria individually.

The results of the competitive review will be taken into consideration by the Director of the Head Start Bureau who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of applicants to be funded. The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services. For example, this might apply to an applicant which has had large, chronic balances of unspent funds due to poor management, or has failed to serve children with programs of adequate quality or in agreed upon numbers. Another example might be an applicant whose past operations lead to a conclusion that is would not be able or willing to effectively involve parents in the program. It may also be decided not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment.

Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

K. Closing Date for Receipt of Applications

The closing date for receipt of applications is December 16, 1983. Applications may be mailed or hand delivered to: Head Start Expansion, Office of Human Development Services, Grants & Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Hand delivered applications received after 5:00 p.m. on the closing date will be considered ineligible and will not be reviewed and evaluated. Other applications will be considered to be received on time if the application was sent no later than the closing date, as evidenced by a dated postmark, unless it arrives too late to be considered by reviewers. In establishing the date of receipt, consideration will be given to documentary evidence of receipt maintained by HHS.

L. Availability of Application Forms and Additional Information

Application kits which contain the prescribed application forms and additional instructions for the applicant may be obtained by writing to the appropriate Regional Office or to the Indian and Migrant Programs Division at ACYF headquarters at the addresses listed in Appendix A.

M. Conferences for Prospective Applicants

A conference for prospective applicants will be held in each ACYF region approximately three weeks after the publication date of this announcement. At this conference, ACYF staff will answer questions concerning this announcement. It is not necessary to attend the conference to submit a grant application. Any prospective applicant, including any prospective Indian or migrant applicant, may attend the conference in any of the ten cities. The conferences are tentatively scheduled in the following cities on the dates indicated:

October 25—Atlanta, Georgia
October 26—Washington, D.C.; Seattle, Washington; Dallas, Texas
October 27—Uniondale, New York; Kansas City, Missouri; San Francisco, California
October 28—Boston, Massachusetts; Denver, Colorado
October 31—Chicago, Illinois

Information about the location and time of a conference may be obtained by calling the regional office for the region in which the conference is being held at the number shown in Appendix A.

(Catalog of Federal Domestic Assistance Program Number 13.600 Project Head Start)

Dated: September 23, 1983.

Lucy C. Biggs,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: September 23, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Appendix A—Regional Program Directors

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Mr. Richard Stirling, Regional Program Director, Office of Human Development Serv., John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203, (617) 223-6450

Region II: New Jersey, New York, Puerto Rico, Virgin Islands

Mr. Dennis Coughlin, Regional Program Director, Office of Human Development

Serv., 26 Federal Plaza, Room 4249, New York, New York 10278, (212) 264–2974

Region III: Delaware, Dist. of Col., Maryland, Pennsylvania, Virginia, West Virginia

Mr. Alvin Perais, Regional Program Director, Office of Human Development Serv., 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–0356

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Mr. John Jordan, Regional Program Director, Office of Human Development Serv., 101 Marietta Towers, Suite 903, Atlanta, Georgia 30323, (404) 242–2134

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Mr. German White, Regional Program Director, Office of Human Development Serv., 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (312) 353–6503

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Serv., 1200 Main Tower, Room 2040, Dallas, Texas 75202, (214) 729–2976

Region VII: Iowa, Kansas, Missouri, Nebraska, Wyoming

Mr. Hilton Baines, Regional Program Director, Office of Human Development Serv., Federal Office Building, Room 384, 601 East 12th Street, Kansas City, Missouri 64106, (816) 758–5401

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Mr. David Chapa, Regional Program Director, Office of Human Development Serv., Federal Office Building, Room 908, Denver, Colorado 80294, (303) 837–3972

Region IX: Arizona, California, Hawaii, Nevada, Outer Pacific Islands

Mr. Roy Fleischer, Regional Program Director, Office of Human Development Serv., 50 United Nations Plaza, Room 445, San Francisco, California 94102, (415) 556–6153

Region X: Alaska, Idaho, Oregon, Washington

Mr. William Hayden, Regional Program Director, Office of Human Development Serv., 2901 Third Avenue, Mail Stop 413, Seattle, Washington 98121, (206) 442–0838

Indian and Migrant Programs Division

Mr. Hank Aguirre, Director, P.O. Box 1182, Washington, D.C. 20013, (202) 755–7715

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Reader Aids

Federal Register

Vol. 48, No. 189

Wednesday, September 28, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39595-39910.....1
39911-40186.....2
40187-40364.....6
40365-40496.....7
40497-40694.....8
40695-40870.....9
40871-41008.....12
41009-41140.....13
41141-41368.....14
41369-41568.....15
41569-41748.....16
41749-42798.....19
42799-42966.....20
42967-43152.....21
43153-43282.....22
43283-43664.....23
43665-44056.....26
44057-44162.....27
44163-44444.....28

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....44082

3 CFR

Administrative Orders:
Memorandums:
September 7, 1983.....40695
Executive Orders:
December 27, 1859 (Revoked by PLO 6462).....43175
September 22, 1866 (Revoked by PLO 6464).....43176
5190 (Revoked by PLO 6463).....43175
5203 (Revoked by PLO 6461).....43175
5694 (Revoked by PLO 6463).....43175
5838 (Revoked by PLO 6463).....43175
6143 (Revoked by PLO 6459).....40724
6276 (Revoked by PLO 6459).....40724
6583 (Revoked by PLO 6459).....40724
8651 (Revoked in part by PLO 6465).....43176
8854 (Amended by PLO 6458).....40232
9000 (Revoked in part by PLO 6465).....43176
9042 (Revoked in part by PLO 6465).....43176
9526 (Revoked in part by PLO 6465).....43176
11888 (Amended by EO 12441).....43157
12401 (Amended by EO 12442).....43283
12428 (Amended by EO 12440).....40873
12439.....40871
12440.....40873
12441.....43157
12442.....43283
Proclamations:
4941 (See Proc. 5104).....44057
5085.....39595
5086.....40187
5087.....40497
5088.....40499
5089.....40501
5090.....40503
5091.....40505
5092.....40507
5093.....41009
5095.....41749
5096.....41751
5097.....42799
5098.....42801
5099.....42967
5100.....43153
5101.....43155
5102.....43665
5103.....43667
5104.....44057

4 CFR

Proposed Rules:
83.....39632

5 CFR

540.....43285
610.....44059
620.....44059
630.....44059
2422.....40189
2426.....40189
2429.....40189
Proposed Rules:
550.....43687
731.....40731
754.....40731
870.....40732
871.....40732
872.....40732
873.....40732

7 CFR

2.....43286
16.....43159
27.....44163
28.....41011, 44163
29.....40365
51.....40509
52.....40875, 40878, 41011, 41571, 42969, 44165
61.....44163
68.....41574
180.....43286
210.....40194
220.....40194
226.....40197, 41141
278.....43287
301.....39597, 40198
421.....39911, 41753
700.....42803
725.....40638
726.....40644
760.....40366
810.....44165, 44168
908.....39602, 40510, 41369, 42969, 43159
910.....39912, 40697, 41574, 43292
981.....40367
1030.....42964
1036.....41753, 44170
1076.....39603

1079.....40511, 41369
1106.....41015, 44170
1865.....40202
1901.....43669
1944.....40202, 40697
1945.....40202
1951.....40202, 41142
2610.....41371
2620.....41373
2900.....43669

Proposed Rules:
28.....41048
52.....40734
68.....44083
75.....44083
210.....43692
215.....43692
220.....43692
235.....43692
278.....40263
279.....40263
631.....40522
660.....40389
658.....39944
800.....41595
985.....42823
989.....43338
993.....41775
1126.....39643, 40894
1941.....40894
1943.....40894
1945.....40894
1980.....40894

8 CFR

100.....43670
103.....41016, 41142, 43160, 43292
109.....40209, 41755
214.....41142, 43292
231.....40209
238.....40210, 41148, 42969
248.....41016
316a.....43161

Proposed Rules:
109.....41776

9 CFR

75.....40512
91.....44061
97.....40881

Proposed Rules:
151.....40899
166.....41596
201.....41425, 42823
203.....41425, 42823
381.....41427

10 CFR

2.....44170
20.....44172
21.....44172
50.....40882, 44173
61.....40512
73.....44172
150.....40882
456.....44146

Proposed Rules:
20.....43051
30.....43051
40.....43051
50.....41429, 44217
70.....43051
430.....41166
1017.....40265

11 CFR

102.....43292

12 CFR

7.....40698
29.....40702
31.....44062
34.....40698
205.....43671
215.....42804
217.....39604, 40702
226.....43673
337.....42969
525.....39912
531.....39912
543.....44174
544.....44174
546.....44174
552.....44174
563b.....44174
569.....44174
571.....44174
614.....41148

Proposed Rules:
5.....40735, 44083
23.....44085
210.....41776
332.....40900
333.....40900
337.....40900
563.....39944
701.....41598
703.....43182
704.....41599
706.....41600
707.....41600

13 CFR

101.....40513

14 CFR

21.....43162, 43166
39.....40210–40212, 41149, 41150, 41755, 41756, 43170, 43293, 43294, 44063
71.....39913, 40213, 41374, 41757, 43171
75.....40214
97.....39913, 41757
251.....43295
287.....43295
323.....43298

Proposed Rules:
Ch. I.....42827
Ch. II.....41171, 41778
11.....43638
21.....43638
39.....40266, 41166, 41167, 43187
45.....43638
71.....40267, 40270, 40525, 41168, 41170, 41778, 42829, 43338–43340, 44219
91.....43638
211.....41430
221.....40389, 44220
252.....43341
253.....43343
302.....41430
399.....43343

15 CFR

369.....40368
399.....42971

Proposed Rules:
928.....41180

16 CFR

2.....41374
4.....41374
13.....41151, 44194
305.....40882
423.....41575

Proposed Rules:
13.....39950, 43051, 43188

17 CFR

33.....41575
180.....41152
210.....44198
239.....44202
240.....39604, 41376
249.....39604, 41376, 43674
274.....44202
275.....41378

Proposed Rules:
210.....44221
229.....44224
250.....41779, 44226
256a.....41779
257.....41779
259.....44226

18 CFR

282.....43678
1300.....41380

Proposed Rules:
271.....40736, 41434

19 CFR

6.....41381
101.....42806

Proposed Rules:
6.....40737
10.....40738
22.....41435
101.....40526
114.....40738
159.....40527
162.....40740

20 CFR

404.....40514
416.....40883
628.....40886
655.....40168, 41154

Proposed Rules:
225.....40390
226.....40390
227.....40390
350.....42829
401.....42830
422.....42830

21 CFR

5.....40703, 43300
14.....40887
73.....41759, 44202
74.....41760
81.....41760, 42807
82.....41760
145.....39916
155.....41155
175.....40515, 44203
177.....44064
178.....42972
193.....41156, 42973
211.....41578, 43679
436.....40704
442.....40516
510.....40704, 40887, 42808
520.....40516, 40704, 40887, 41384, 42809, 44203
558.....44064, 44204
700.....43679
800.....43679
522.....40704, 42808, 43300
524.....39607, 41157
540.....41579
556.....41384, 42809
558.....40704, 42810, 43301, 43302
561.....40369, 42973
700.....41578
800.....41578

Proposed Rules:
Subch. H.....40272, 43344
131.....44087
133.....44087
211.....41601, 43053, 43698
291.....41049
341.....41786
700.....41601, 43053, 43698
800.....41601, 43053, 43698
882.....40273, 41181, 43345

23 CFR

Proposed Rules:
Ch. I.....39953
140.....44064
658.....41276
920.....44064
924.....44064

24 CFR

Ch. IX.....44071
Ch. X.....44071
Ch. XI.....44071
25.....40705
26.....43302
200.....44066
201.....43309
203.....39608, 44066
205.....44068
207.....40710, 44068
213.....39608, 44068
215.....43310
221.....43310, 44068
232.....44068
234.....39608
235.....40711
236.....43310
241.....44068
242.....44068
244.....44068
570.....40517, 43538
882.....43578
888.....43314, 43578
890.....42810

Proposed Rules:
805.....43345
1700.....44406
1710.....44406, 44412
1720.....44406

25 CFR

250.....41760
256.....41579

Proposed Rules:
211.....41051
212.....41051
225.....41051
700.....41435

26 CFR

1.....40214, 40370, 40371, 40888, 41017

5f.....41385
25.....40371
31.....40518, 44072
48.....40217
301.....40371, 40376, 41018, 41581

Proposed Rules:
1.....39953, 40528, 41051, 41436, 42836, 43698
5f.....39953
20.....44087

27 CFR

5.....43319
9.....40377, 42973
19.....43319

Proposed Rules:
5.....43346
9.....41602, 41604
178.....44088

28 CFR

Proposed Rules:
0.....41181
16.....41181

29 CFR

16.....43322
553.....40518
1610.....41764
1952.....40902

Proposed Rules:
Ch. XIV.....41436
1910.....42836

30 CFR

210.....43323
211.....41589
241.....43323
250.....43323
251.....40380, 43323
256.....43323
700.....40622
701.....39892, 40140, 40622, 41720, 43956, 43994, 44006, 44344
736.....41312
760.....41312
761.....41312
762.....41312
764.....41312
765.....41312
769.....41312
770.....44344
771.....44344
772.....40622
773.....44344
774.....44344
775.....44344
776.....40622
777.....44344
778.....44344
779.....41312, 43956
780.....43956
782.....44344
783.....41312, 43956
784.....43956
785.....39892
786.....44344
787.....44344
788.....44344
815.....40622
816.....39892, 40140, 41720, 43956, 43994, 44006, 44032
817.....39892, 40140, 41720, 43956, 43994, 44006, 44032
824.....39892
872.....41018, 41019
921.....41000, 43679
934.....41387, 43324
938.....40223, 40888
939.....40990, 43679

Proposed Rules:
55.....41747
56.....41747
57.....41747
75.....40165
210.....42902
212.....42902
217.....42902
218.....42902
219.....42902
228.....42902
229.....42902
241.....42902
250.....43192
901.....44233
902.....41182
913.....40908
934.....44236
935.....39645, 40396
938.....39645
948.....43053
950.....41608

31 CFR

500.....41157
515.....41158
520.....41159
626.....41764

32 CFR

62b.....41581
286g.....39917
634.....39919
730.....40224
806.....41020
2003.....40849

33 CFR

92.....41587
100.....39609, 40714, 40715, 43171
117.....41400, 43172
146.....43173
161.....41587
165.....39609, 39610, 40380, 41400, 41401
181.....40716
204.....41160
401.....39934

Proposed Rules:
1.....40741
110.....43192
117.....39646
156.....40741
329.....40909
322.....40909
323.....40909
325.....40909
327.....40909
328.....40909
330.....40909

34 CFR

668.....40380

Proposed Rules:
74.....42837
75.....42837
76.....42837
77.....42837
78.....42837
366.....39647
674.....44054
675.....44054
676.....44054

36 CFR

1.....43174
2.....43174
3.....43174
4.....43174
5.....43174
6.....43174
7.....43174
9.....43174
12.....43174
13.....43174
219.....40381
331.....40719

38 CFR

3.....41160
21.....40224
36.....40226

Proposed Rules:
21.....41438
36.....40402

39 CFR

10.....39610
111.....41162, 42977
253.....41401
601.....40232

Proposed Rules:
111.....39647, 39648
233.....40910

40 CFR

17.....39934
52.....41402–41406, 41588 42813, 42979
60.....41407, 41764, 42814, 42815, 43325–43327
61.....41407, 42815, 43326, 43327
81.....40722, 41408, 43328
86.....41296, 41303
122.....39611
123.....39611
124.....39611
144.....39611
145.....39611
180.....40384, 42981, 44204, 44205
233.....39611
270.....39611
271.....39611, 39623, 43679
300.....40658
410.....39624
413.....41409, 43680
425.....41409
433.....41409, 43680
465.....41409
466.....41409
468.....41409
469.....41409
720.....41132

Proposed Rules:
50.....41608
52.....39653, 41609, 41610, 43194, 43347
57.....42050
61.....40911
65.....40278
81.....39655, 40746, 41786, 43699
124.....40098
144.....40098
146.....40098
147.....40098
180.....41184–41186, 43054
271.....41449
300.....40674
405.....41610, 44091
406.....41610, 44091
407.....41610, 44091
408.....41610, 44091
409.....41610, 44091
411.....41610, 44091
412.....41610, 44091
422.....41610, 44091
424.....41610, 44091
426.....41610, 44091
429.....41610, 44091
430.....41610, 44091
431.....41610, 44091
432.....41610, 44091
433.....41610, 44091
440.....41610, 44091
465.....43195
721.....40282, 40911, 42840
764.....42898
799.....39656, 42839

41 CFR

Ch. 1.....40385, 43682
Ch. 7.....40385
Ch. 105.....43685
1–1.....43683
5–10.....41766
14–7.....43328
29–70.....42816
105–61.....41770

Proposed Rules:
9–1.....41450
9–7.....41450
9–50.....41450

42 CFR

53.....42982
57.....42982
405.....39740, 39752
409.....39752
435.....39624
436.....39624
489.....39752

Proposed Rules:
431.....40749
435.....39959
436.....39959
441.....41450

43 CFR

Ch. II.....40889
1820.....40724, 42984
1880.....42816
3480.....41589

Public Land Orders:
417 (Revoked in part by PLO 6465).....43176
1707 (Amended by PLO 6458).....40232
6423 (Corrected by PLO 6460).....41021
6457.....39939
6458.....40232
6459.....40724
6460.....41021

6461.....43175
6462.....43175
6463.....43175
6464.....43176
6465.....43176
6466.....43176

Proposed Rules:
3160.....41738

44 CFR

61.....42818
64.....41410, 41413, 44206
65.....40890
67.....40891, 41021
81.....44208
205.....41415, 42818
302.....44208
305.....44076
307.....44076
310.....44076
350.....44332

Proposed Rules:
67.....40911–40919, 43700, 44091

45 CFR

602.....44077
610.....44077
635.....44077
650.....44077
801.....41594

Proposed Rules:
302.....41450
304.....41450
400.....41187

46 CFR

4.....43328
26.....43328
35.....43328
78.....43328
97.....43328
109.....43328
153.....39629
154.....39629
167.....43328
185.....43328
196.....43328
197.....43328

Proposed Rules:
Ch. IV.....41199
7.....41454
502.....44091
512.....44091
531.....44091
536.....41052

47 CFR

Ch. I.....41040
1.....41415, 41770, 43329
2.....40519
25.....40233, 40256, 43330
69.....42984
73.....41416–41422, 42944, 43177–43179
74.....41422
83.....41771
95.....41415
97.....43180

Proposed Rules:
Ch. I.....43348
0.....43353
1.....43355
2.....41787
68.....39656
73.....41464–41468, 41611, 41787, 43196, 43700
87.....43359
90.....43355
94.....43355
96.....41787

48 CFR

Ch. 1 (Parts 1–69).....41774, 42102, 43273, 44215

Proposed Rules:
Ch. 9.....43772

49 CFR

1.....40519, 44078, 44079
23.....41163
71.....43276
179.....39630
511.....44081
520.....44081
551.....44081
553.....44081
555.....44081
556.....44081
571.....39908, 39939, 40260, 42819
572.....44081
573.....44081
574.....44081
575.....44081
581.....43331
660.....41562
661.....41562
1042.....39630
1043.....43331
1160.....39630, 40387
1161.....39630
1162.....39630, 40520
1165.....39630
1168.....39630, 40387
1181.....39630
1307.....40520

Proposed Rules:
27.....40684
213.....39965
571.....40282, 40286
661.....41568
821.....39657
1135.....41469
1157.....40287

50 CFR

17.....39941, 40178, 43040
20.....40852, 43646
21.....42820
285.....40892, 41163, 43043
611.....41424, 43044, 43335
655.....43044
661.....40521
662.....42820
663.....41164
671.....40725
672.....43044, 43335
675.....43335

Proposed Rules:
17.....40288, 40404, 40407, 40920, 44237
23.....40750, 42840
26.....39661
32.....40411
33.....40411
227.....44237
611.....40924, 41469, 41788–41791
651.....41797
655.....39967, 43700
658.....42840
661.....41202, 43700
662.....40752, 41202
663.....41202
675.....41791
681.....39665

LIST OF PUBLIC LAWS

Last Listing September 23, 1983

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