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Federal Register

Thursday
January 30, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Accounting
Securities and Exchange Commission

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

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National Credit Union Administration

Fisheries
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Income Taxes
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Marine Safety
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Selected Subjects

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

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Presidential Documents

Title 3—

The President

Proclamation 5434 of January 28, 1986

Death of American Astronauts on Board Space Shuttle Challenger

By the President of the United States of America

A Proclamation

As a mark of respect to the memory of Francis R. Scobee, Michael J. Smith, Ellison S. Onizuka, Ronald E. McNair, Judith A. Resnik, Gregory B. Jarvis, and Sharon Christa McAuliffe who gave their lives during the mission of the Space Shuttle Challenger on January 28, 1986, I hereby order, by the authority vested in me as President of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal government in the District of Columbia and throughout the United States and its Territories and Possessions through Monday, February 3, 1986. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-2241
Filed 1-29-86; 11:24 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions on Pricing Reserve Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends one sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence will allow the Raisin Administrative Committee (Committee) to continue for another year the inventory adjustment program for Zante Currants implemented last season. The proposal was recommended by the Committee, which works with USDA in administering the marketing order.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will have an impact on a substantial number of small entities but, the impact will not be significant. The net proceeds to equity holders resulting from the sale of 1985 crop reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions. Allowing the use of 1985 Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset the financial losses incurred by packers in connection with the sale of those raisins in competition with lower-priced foreign-produced Zante Currants. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules proposed under the Agricultural Marketing Agreement Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Producers and handlers of Zante Currant raisins have been conducting their operations on the premise that the Zante Currant inventory adjustment program would be continued into the 1985-86 crop year and no useful purpose would be served by delaying the effective date of this action.

This final rule would suspend for Zante Currant raisins, through July 31, 1986, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current corp year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the Committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: Provided, That where the outlook for the next crop year or other factors have cause a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee."

Notice of this action was published in the **Federal Register** on November 1, 1985 (50 FR 45627). Interested persons were invited to submit written comments by December 2, 1985. Two comments were received in favor of the proposal.

The carryover into the 1984–85 crop year from the 1983 Zante Currant production totalled 2,472 tons and was valued at $1,150 per ton (producer's price) while the 1984 producer price was only $625 per ton. Although an inventory adjustment program was initiated last season, a significant portion of that carryover was not adjusted because only 524 tons of 1984 crop reserve Zante Currants were available for the program. Continuation of that program will allow handlers the opportunity to continue to adjust the value of their 1983 crop carryover of Zante Currant raisins by authorizing the purchase of 1985–86 reserve Zante Currants at $100 per ton for each ton of 1983 crop Zante Currant

raisins held in inventory on July 31, 1984, thereby averaging the price per ton for the 1983 crop inventory down to $625. Allowing the use of 1985–86 crop Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset financial losses incurred by handlers in connection with the sales of those raisins during the 1984–85 crop year.

The sentence to be suspended would require reserve raisins to be offered at a price well above the $100 level needed to devalue the 1983 crop carryover inventory and thus would not allow the necessary price adjustments to be accomplished.

Producers and handlers of Zante Currant raisins have been conducting their operations based on the premise that the Zante Currant inventory adjustment program would be continued into the 1985–86 crop year if a reserve was established. In price negotiations between raisin handlers and the bargaining association, handlers agreed to the 1984 crop free tonnage price of $625 contingent upon the establishment of the Zante Currant inventory adjustment program. Without such a program, handlers would have accepted 1984 crop Zante Currants only on a consignment basis.

Therefore, after consideration of all relevant matter presented, including that of the notice, the information and recommendation submitted by the Committee, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant the sale of Zante Currant reserve raisins to handlers to provide them with raisins to sell as free tonnage pursuant to 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended with regard to Zante Currant raisins pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1986, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1986.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

PART 989—[AMENDED]

2. The suspension is as follows:

§ 989.67 [Amended]

The penultimate sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1986.

Dated: January 27, 1986.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–2097 Filed 1–29–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the descriptions of the Will Rogers World Airport, Oklahoma City, OK; Tinker Air Force Base (AFB), OK; Burbank-Glendale-Pasadena Airport, CA; El Toro Marine Corps Air Station (MCAS), Santa Ana, CA and Ontario International Airport, CA, Airport Radar Service Areas (ARSA). In the final rule, errors were made in the descriptions of excluded airspace at Will Rogers World Airport, Oklahoma City, OK; Tinker AFB, OK; Ontario, CA, and Burbank-Glendale-Pasadena Airport, CA. An error was made in the relative bearings from El Toro MCAS, Santa Ana, CA. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85–29125 was published on December 9, 1985, that establishes the Will Rogers World Airport, Oklahoma City, OK; Tinker AFB, OK; Burbank-Glendale-Pasadena Airport, CA; El Toro MCAS, CA, and Ontario International Airport ARSA's (50 FR 50254). In the rule, omissions were made in the descriptions of Will Rogers World Airport, Oklahoma City, OK, and Tinker AFB, ARSA's. In the case of Burbank-Glendale-Pasadena, CA, Airport, the location of Whiteman Airport was in error. The exclusions of the 5- to 10-mile area of Ontario International Airport were misstated. In the case of El Toro MCAS, Santa Ana, CA, the relative bearings from the airport were in error. This action corrects those errors.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–29125, as published in the **Federal Register** on December 9, 1985, (50 FR 50254) is corrected as follows:

PART 71—[CORRECTED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Burbank-Glendale-Pasadena Airport, CA [Amended]

By removing the words "long. 118°25'45" W." and by substituting the words "long. 118°24'45" W."

El Toro MCAS, Santa Ana, CA [Amended]

By removing the words "the 255° bearing" and by substituting the words "the 241° bearing" and by removing the words "the 335° bearing" and by substituting the words "the 331° bearing"

Ontario International Airport, CA [Amended]

By removing the words "on the east clockwise to the 314° bearing from the airport"

Tinker AFB, OK [Amended]

By removing the words "extending upward from 2,500 feet MSL within a 10-mile radius of Tinker AFB" and by substituting the words "extending upward from 2,500 feet MSL to and including 5,300 feet MSL" and by removing the words "excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within 1½ miles of Interstate 35" and by substituting the words "excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL west of line 1½ miles east of Interstate 35" and by removing the words "and excluding that airspace designated as the Will Rogers World Airport, OK, Airport Radar Service Area" and by substituting the words "and excluding that airspace within 5 to 10 miles from Tinker AFB designated as the Will Rogers World Airport, Oklahoma City, OK, Airport Radar Service Area"

Will Rogers World Airport, Oklahoma City, OK [Revised]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Will Rogers World Airport (lat. 35°23'35" N., long. 97°36'02", excluding that airspace within a 1-mile radius of Downtown Airpark (lat. 36°26'57" N., long. 97°31'58" W.) and that airspace extending upward from the surface to but not including 3,000 feet MSL within one and one-half miles either side to Interstate 35; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of Will Rogers World Airport, excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL east of line beginning at a point on the 033° bearing from Will Rogers World Airport at the 5-mile arc from the airport extending to the 10-mile arc from the airport parallel to Runway 17/35 and west of a line 1½ miles west of Interstate 35, and excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within one and one-half miles either side of Interstate 35, and excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within a 3-mile radius of the University of Oklahoma Westheimer Airpark (lat. 35°15'00" N., long. 97°28'00" W.), and excluding that airspace within 5 miles of Tinker AFB, OK.

Issued in Washington, DC, on January 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-2012 Filed 1-29-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6621; 34-22820; IC-14908; FR-24; File No. S7-29-85]

Disclosure Amendments to Regulation S-X Regarding Repurchase and Reverse Repurchase Agreements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is today amending the disclosure requirements of Regulation S-X to require disclosure regarding the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk involved in these transactions.

DATE: These amendments are effective for financial statements covering fiscal years ending on or after February 28, 1986. Earlier application is strongly encouraged.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack or Laurel R. Bond, Office of the Chief Accountant (202-272-2130) or Alexander G. Shtofman, Divison of Corporation Finance (202-272-2997), Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is amending Regulation S-X to require disclosure in certain circumstances of the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk associated therewith.

Specifically, the amendments require that where the higher of carrying or market value of assets sold under repurchase agreements or the carrying value of reverse repurchase agreements exceeds 10% of total assets, the amounts involved should be disclosed as a separate line item in the balance sheet.

Where the higher of the carrying value of market value of assets sold under repurchase agreements exceeds 10% of total assets, footnote disclosures are required regarding the assets sold and the terms of the agreements. (Repurchase agreements that involve the sale of securities or other assets for which unrealized changes in market value are reported in current income, or which were obtained pursuant to reverse repurchase agreements, need not be considered for purposes of this requirement.)

Where the carrying value of reverse repurchase agreements exceeds 10% of total assets, footnote disclosures are required regarding the registrant's policies with respect to taking possession of the underlying assets and the existence and nature of provisions, if any, to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty.

Where the risk of loss (as defined) under repurchase or reverse repurchase agreements with an individual counterparty or group of related counterparties exceeds 10% of shareholders' equity (or, in the case of management investment companies, net asset value), footnote disclosure of certain information regarding the agreements, including the identity of the counterparty, is required.

II. Background

A. Repurchase Agreements

Generally, selling owned securities or other assets with an unconditional agreement to repurchase the same securities or assets at a specified date has been considered a collateralized borrowing for accounting purposes. Such transactions are commonly referred to as "repurchase agreements."[1]

Although financing treatment may be both logical and appropriate when an asset is sold under agreement to repurchase, and the same asset is in fact repurchased within a very short period of time, it appears that the seller generally loses control over and access to the assets sold. This exposes the seller to a risk of loss (measured by the difference between the carrying value of the assets sold, including accrued interest, plus any cash or other assets on deposit to secure the repurchase obligation, less the amount received in the transaction) in the event that the

[1] Throughout this release, a sale with an agreement to repurchase the same or substantially the same asset will be designated as a "repurchase agreement," and a purchase with an agreement to sell back will be designated as a "reverse repurchase agreement." Certain entities (e.g., savings and loans and investment companies) may use different terminology to describe the same transaction. [*See* Investment Company Act Release No. 10666 (April 18, 1979) 44 FR 25128.]

counterparty to the transaction does not fulfull its part of the agreement.

In contrast to the more simple form of repurchase agreement described above, the Commission has seen transactions where (1) The initial term of the agreement was not for a very short period of time, but rather was for as long as a year (and the agreement could be extended at maturity), (2) the same mortgage-backed securities were not to be repurchased ("dollar" repurchase agreements) and (3) the initial purchase of specifically identified mortgage-backed securities was financed by a repurchase agreement (selling the purchased securities to the dealer with a simultaneous agreement to buy them back at a later date). Further, when the transactions are dollar repurchase agreements involving mortgage-backed securities (i.e., GNMAs), the seller relinquishes the right to receive principal and interest payments on the subject securities because the mortgage pools underlying the securities are no longer specifically identified and the securities are no longer registered in the seller's name.

B. Reverse Repurchase Agreements

Purchasing securities or other assets with an unconditional agreement to sell the same securities or other assets back to the seller at an agreed upon later date is generally considered for accounting purposes to be a short-term investment/lending secured by the underlying assets. These transactions are generally referred to as "reverse repurchase agreements."

The accounting and disclosure questions regarding reverse repurchase agreements center on whether the purchaser's interest in securities or other assets purchased is in fact adequate and, if so, whether the market value of the underlying securities or other assets is sufficient to protect the purchaser in the event of default by the seller.

C. Recent Developments

Following certain recent developments in the government securities market, both the accounting profession and the private-sector standard setters initiated various projects relating to repurchase and reverse repurchase agreements. On several occasions the Commission's staff met with representatives of certain specialized industry committees of the American Institute of Certified Public Accountants ("AICPA"), the Financial Accounting Standards Board ("FASB"), the AICPA's Auditing Standards Board ("ASB") and the Governmental Accounting Standards Board ("GASB") to emphasize the staff's concerns about accounting, auditing and disclosure issues.

The Commission notes that the following private sector initiatives have been undertaken:

- The ASB formed a special task force to review the auditing issues. In a published report,[2] the task force concluded that while existing general auditing standards are adequate, additional educational guidance is needed. Further, the report states that although broad guidance regarding loss contingences is provided in FASB Statement of Financial Accounting Standards No. 5,[3] the task force believes that more specific guidance is needed for financial statement preparers and auditors of these transactions. The task force also recommended, among other things, that a special task force be formed to monitor developments in the area of financial instruments and that this task force provide timely auditing guidance, as needed, when new financial products are introduced.
- The AICPA Savings and Loan Associations Committee recently published an exposure draft of a Statement of Position [4] concerning disclosure issues related to certain repurchase and reverse repurchase agreements which are prevalent in the thrift industry. This document would supplement their recently issued Statement of Position No. 85-2, *"Accounting for Dollar Repurchase-Dollar Reverse Repurchase Agreements by Sellers-Borrowers"* on accounting for certain repurchase agreements.
- The GASB has published an exposure draft of a Statement of Governmental Accounting Standards [5] on accounting and disclosure for repurchase-reverse repurchase agreements and has established a special task force and has held a public hearing to address these issues.

Recognizing that repurchase and reverse repurchase agreements can involve significant risks, the Federal Financial Institutions Examination Council ("FFIEC") recently published a Supervisory Policy to establish minimum guidelines for managing credit risk exposure and controlling the assets transferred under these transactions. These guidelines have been adopted by the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the National Credit Union Administration and have been proposed for comment by the Federal Home Loan Bank Board.

D. Existing Disclosure Requirements

To some extent, existing requirements of Regulation S-X either directly or indirectly address disclosures of repurchase and reverse repurchase agreements. Articles 4 and 5 (17 CFR 210.4-01 et seq. and 210.5-01 et seq., respectively) in certain instances require cost and market value disclosure of investment securities as well as a description of assets subject to lien. Article 9 (17 CFR 210.9-01 et seq.), which applies to bank holding companies, specifically requires cost and market vlaue of certain obligations of the U.S. Government as well as balance sheet disclosure of repurchase and reverse repurchase agreements. Finally, Schedule 12 of Article 12 (17 CFR 210.12-12), which applies to management investment companies, specifically requires the following information for each agreement under which securities purchased are subject to resale: (1) The name of the party or parties to the agreement, (2) the date of the agreement, (3) the total amount to be received at termination of the agreement, (4) the termination date and (5) a description of the securities subject to the agreement.[6]

In addition, under Item 303 of Regulation S-K (17 CRF 299.303), registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements. The fact that these transactions can be timed to close at particular points in time does not affect this obligation.

III. Consideration of Comments Received and Changes From Amendments as Originally Proposed

The amendments were originally proposed in Release No. 33-6590, published on June 27, 1985. The

[2] *Report of the Special Task Force on Audits of Repurchase Securities Transactions* (New York: AICPA, 1985)

[3] *Statement of Financial Accounting Standards No. 5: Accounting for Contingencies* (Stamford, CT: FASB, 1975)

[4] *Proposed Statement of Position: Reporting Repurchase-Reverse Repurchase Agreements and Mortgage-Backed Certificates by Savings and Loan Associations* (New York: AICPA, 1985)

[5] *Proposed Statement of Governmental Accounting Standards: Accounting and Financial Reporting for Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements* (Stamford, CT: GASB, 1985)

[6] To the extent that the amendments adopted today would elicit the same information that is presently required by Schedule 12 to Article 12, it is expected that management investment companies would continue to comply with the requirements of that schedule.

Commission received thirty-one letters of comment in response to the proposed amendments. The following paragraphs summarize the main points raised by the respondents and any changes adopted in consideration of their views.

A. Threshold Tests for Repurchase Agreements

The proposed threshold tests for determining reportable amounts of repurchase agreements and the amount at risk (as defined) pursuant thereto were based solely on the carrying amounts of assets sold under agreements to repurchase. Certain respondents indicated that basing the tests on the market value of assets sold (where assets are not carried at market) would more appropriately measure the economic significance of repurchase agreements and the resultant risk. Although the Commission recognizes this point, it notes that basing the tests solely on market values would not appropriately measure significance in relation to total assets as reported in financial statements in cases where the market value of assets sold is less than their carrying amounts. Therefore, the final amendments require the higher of the carrying amounts or market values of assets sold under repurchase agreements to be used in applying the threshold tests.

B. Application of Footnote Disclosures Regarding Repurchase Agreements

The proposal would have required footnote disclosure of the nature and characteristics of securities or other assets sold pursuant to repurchase agreements and maturities and interest rates on the corresponding repurchase liabilities, in all cases where the liability under repurchase agreements was required to be separately reported in the balance sheet. Certain respondents representing the securities dealer community objected to that part of the proposal on the basis that the disclosures would have provided their competitors with what they believe to be significant proprietary information regarding trading strategies for major portions of their businesses.

As a result of weighing these concerns against the intended benefits of the disclosures, which are to provide shareholders with the information necessary to assess the overall economic impact of registrants financing significant portions of their assets with repurchase agreements, the Commission has determined to base the footnote disclosure requirement on the method of accounting for the assets sold under repurchase agreements. The Commission notes that the overall economic impact is reflected in reported results of operations of registrants (including securities dealers) who, under generally accepted accounting principles, account for trading assets on a marked-to-market basis and report unrealized changes in the market value of trading assets sold under repurchase agreements in current income. The same is not necessarily true for registrants who utilize some other basis of accounting for the assets they sell under repurchase agreements.[7] The Commission believes that in such instances the information required by the footnote will aid shareholders in assessing the overall economic impact of the transactions.

Accordingly, in determining whether a registrant's repurchase agreement activity meets the threshold levels for the footnote disclosures regarding securities or other assets sold pursuant to repurchase agreements and the maturities of and interest rates on the corresponding repurchase liabilities, registants are not required by the amendments to include repurchase agreements where unrealized changes in the market value of the securities or other assets subject to the repurchase agreements are reported in current income. Furthermore, in the event that a registrant has repurchase agreement activity above the threshold levels involving securities or other assets for which it does not report unrealized changes in market value in current income, any agreements involving securities or other assets for which it does report such unrealized changes need not be included in this footnote disclosure.

Additionally, the Commission is clarifying in the final amendments that this footnote disclosure regarding assets is not required where the securities or other assets sold pursuant to repurchase agreements were obtained in reverse repurchase agreements.[8] Large amounts of repurchase agreements involving such securities or other assets are entered into by certain registrants, particularly those that are government securities dealers. However, unrealized changes in the market value of those securities or other assets which have been purchased under agreements to resell generally are not reported in current income. Thus, basing this footnote disclosure regarding repurchase agreements solely on the method of accounting for the securities or other assets sold would result in disclosure regarding securities or other assets obtained under reverse repurchase agreements. Inclusion of such securities or other assets purchased under agreements to resell in this footnote disclosure would not be particularly meaningful. Accordingly, the final rule clarifies that, in determining the threshold levels for this footnote disclosure regarding repurchase agreements, securities or other assets obtained under reverse repurchase agreements that have been sold in repurchase agreements need not be included nor need they be included in the footnote disclosure in the event that the threshold levels are otherwise met.

C. Footnote Disclosure of Yield on Assets Sold

Although certain respondents agreed with the proposed inclusion of yield on assets sold in the footnote disclosure discussed above under paragraph III.B., many respondents stated that disclosure of the yield on such assets is not necessary to evaluate the transactions in light of the other information required in the footnote. The Commission believes that disclosure of carrying value and market value for each type of asset sold in conjunction with information concerning the terms and maturities of the repurchase agreements is sufficient without disclosure of the yield on the assets sold. Accordingly, the final amendments do not require disclosure of the yield on assets sold under repurchase agreements.

D. Threshold for Disclosure of Risk Relating to Repurchase and Reverse Repurchase Agreements

The proposal would have required certain disclosures in the event that the amount at risk (as defined) under repurchase agreements with any one counterparty or group of related counterparties exceeded 5% of stockholder's equity[9] or if the aggregate amount of reverse repurchase agreements with any one counterparty or group of related counterparties

[7] For these registants, reported results of operations for a given period would reflect the overall economic impact only if, by chance, the market value of the assets sold under agreements to repurchase was the same at the beginning and end of the period.

[8] The Commission notes, however, that repurchase agreements involving securities or other assets purchased in reverse repurchase agreements remain subject to the disclosure requirements based on "amount at risk" (as defined) because the risk to a registrant due to the potential of counterparty failure is the same regardless of the source of the assets involved in the repurchase agreement. Furthermore, the liabilities relating to such repurchase agreements also remain subject to the balance sheet disclosure required by the amendments.

exceeded 5% of stockholders' equity [10] and the assets subject to these agreements were not in the possession of the registrant or a third party agent that had affirmatively agreed to act as custodian for the registrant. Several respondents specifically endorsed the reasonableness of 5% of stockholders' equity as a threshold for the determination of amount at risk. However, several respondents expressed their belief that 5% of stockholders' equity would be too low. Although there was support at both the 5% and the the 10% level, the Commission believes that investors are adequately protected if the threshold for this disclosure is 10% and the amendments reflect this change.

E. Disclosure of Risk Relating to Repurchase Agreements

The proposed amendments would have required presentation of the footnote disclosures discussed in paragraphs III.B. and III.C. above, separately, for repurchase agreements with each individual counterparty for whom the "amount at risk' threshold test were met, as well as the identity of each such counterparty. The Commission continues to believe that it is necessary to disclose information concerning material concentrations if the registrant is exposed to risk of loss in the event that the counterparty fails to fulfill its parts of the agreement(s). The Commission has determined that the information which is necessary to facilitate shareholders' assessment of this risk with respect to repurchase agreements with one counterparty or group of related counterparties is the identity of the counterparty with whom the risk exists, the amount at risk with each such counterparty and the weighted average maturity of repurchase agreement with each. Accordingly, disclosure of this information is required and the repetition of the footnote disclosure is not required as proposed.

The disclosure of counterparty name is consistent with current reporting requirements. Article 12, Schedule 12 of Regulation S–X requires, among other disclosures, naming by management investment companies of the counterparty to each reverse repurchase agreement. In addition, Item 101(c) (vii) of Regulation S–K requires registrants to name each customer from whom 10% or more of consolidated revenues are derived if loss of the customer would have a material adverse effect.

Some respondents suggested that the risk disclosure under the amendments being adopted today should acknowledge the existence of such counterparties but not name them. They cited in support of this view the requirement of FASB Statement of Financial Accounting Standards No., 14,[11] as amended, which requires disclosure of existence of major customers. However, none of these respondents noted the current requirements of Regulation S–K which require disclosure of the names of major customers.

The Commission has considered the views of certain respondents that naming counterparties in this context would affect confidential business relationships, and thus affect competition, and has weighed those views against the intended benefits of the disclosure. The Commission believes that disclosure of these material risks is necessary for investor protection and that, in order to provide meaningful disclosure, the identity of the counterparty is necessary for investors to evaluate the risk entailed.

F. Footnote Disclosures Regarding Reverse Repurchase Agreements

Where a separate caption was required in the balance sheet for reverse repurchase agreements, the proposal would have required footnote disclosure of the registrant's policy with regard to taking possession of the assets purchased and the terms of reverse repurchase agreements (including, at a minimum, the maturities, interest rates and whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of the default of the counterparty and, if so, the nature of those provisions).

As indicated in paragraph III.G. below, the adequacy of a registrant's interest in a sufficient amount of the assets purchased and the subsequent fluctuations in the market value of such assets are directly relevant to the risk of loss involved in such transactions and such information is necessary for shareholders to evaluate registrants' activities at material levels. However, certain respondents objected to the proposed disclosure of other terms of the reverse repurchase agreements, specifically maturities and interest rates, on the grounds that significant proprietary information would thereby be disclosed.

The Commission has weighed these objections against the incremental value of requiring these maturity and interest rate disclosures in addition to other disclosures which will be required, and has decided that shareholders will be adequately protected if the maturities and interest rates are not disclosed in this context. However, as discussed in paragraph III G. below, the Commission continues to believe that certain information relating to the terms of the agreements should be disclosed in the event that the amount at risk with any one counterparty of group of counterparties exceeds the applicable threshold level. Further, the Commission emphasizes that material deviations from a stated policy regarding taking possession of assets under reverse repurchase agreements are required to be disclosed. Also, the disclosure of provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of counterparty default must be sufficiently detailed to accurately reflect registrants' positions.

G. Disclosure of Risk Under Reverse Repurchase Agreements

Where the aggregate carrying amount of reverse repurchase agreements with one counterparty or group of related counterparties exceeded 5% of stockholders' equity[12] and the assets subject to those agreements were not in the possession of the registrant or its agent, the proposal would have required disclosure of each such counterparty's identity, the carrying amount of the agreements with each and the terms of the agreements with each.

The risk that a loss will result from counterparty default under a reverse repurchase agreement is a function of the value of the assets subject to the agreement in which the registrant has assured an interest relative to the carrying amount of the agreement. Thus, in the event that the registrant's interest has not been assured in a sufficient amount of assets, or that the market value of the assets in which such interest has been assured does not remain sufficient, the registrant is at risk in the event that the counterparty does not fulfill its obligations under the agreement. The risk, if any, to the registrant in that event, however, is not affected if the value of the assets remains sufficient and the registrant's interest in the assets has been assured

[9] In the case of investment companies, 5% of net asset value.

[10] In the case of investment companies, 5% of net asset value.

[11] *Statement of Financial Accounting Standards No. 14: Financial Reporting for Segments of a Business Enterprise* (Stamford, CT: FASB, 1976)

[12] In the case of investment companies, 5% of net asset value.

but the registrant or its agent does not retain possession of the assets but delivers them in another transaction.[13] Such practice is common in operations where securities or other assets obtained from one counterparty in a reverse repurchase agreement are sold to another counterparty in a repurchase agreement or when securities obtained are delivered to cover a short sale.

In Release No. 33–6590, the Commission stated that the accounting and disclosure questions regarding reverse repurchase transactions center on whether the purchaser's interest in securities or other assets purchased is in fact secured and, if so, whether the market value of the underlying assets is sufficient to protect the purchaser in the event of default by the seller. Furthermore, the Commission stated that the proposed disclosure would include the registrant's policies regarding taking possession of the underlying assets and provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty.

Notwithstanding these references in Release No. 33–6590 to the importance of maintaining an interest in assets of sufficient market value, certain respondents noted that the proposed threshold for counterparty risk disclosure could be read not to consider risk due to decline in market value of assets in the possession of the registrant or its agent.[14] Accordingly, the amendments being adopted today have been clarified to reflect the intent that declines in market value of assets purchased under agreements to resell are to be considered in the determination of amount at risk. In addition, the amendments have been clarified to indicate that the fact that the registrant does not retain possession of assets purchased from and delivered by the selling counterparty need not be considered in determining amount at risk unless the assets are returned to the selling counterparty for less than their approximate market value.

The Commission has determined that disclosure related to amounts at risk under reverse repurchase agreements should consist of only the name of each counterparty or group of related counterparties with whom such amount is at risk, the amount at risk with each and the weighted average maturity of the agreements with each. This is consistent with the corresponding required disclosures regarding amounts at risk under repurchase agreements.

H. Parenthetical Disclosure of Market Value of Assets Purchased Under Agreements To Resell

In addition to the requirement for a separate balance sheet caption where the carrying amount of assets purchased under agreements to resell exceeded 10% of total assets, the proposal would have required parenthetical disclosure on the face of the balance sheet of the aggregate market value of such assets held by the registrant or its agent. The Commission recognizes that this proposed requirement would have resulted in disclosure that would not have been meaningful in certain circumstances and the final amendments do not include this requirement.

For the reasons noted in paragraph III.G. above, registrants that do not retain possession of the securities or other assets obtained from the counterparty to the reverse repurchase agreement throughout the term of the reverse repurchase agreement do not necessarily subject themselves to risk of reverse repurchase agreement counterparty default. Where such assets are not retained, disclosure concerning aggregate amounts held by the registrant or its agent would not be meaningful. Furthermore, the relationship of the market value of the aggregate amount of assets held in comparison to the corresponding aggregate amount of reverse repurchase agreements does not necessarily reflect the relationship of the value of assets held in connection with individual agreements or aggregate agreements with the same counterparty.

Respondents differed in their suggestions regarding this aspect of the proposal. In addition, the Commission notes that other aspects of the proposal (the disclosure of material amounts at risk with one counterparty, and the required disclosure of the registrant's policy with regard to taking possession of securities or other assets purchased and whether the agreements contain provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and the nature of any such provisions) should provide shareholders with sufficient information to assess any risks posed by registrants' activities.

I. Other

Other views expressed by respondents include: (a) new disclosure requirements for repurchase and reverse repurchase agreements are not necessary, given the existing requirements that are discussed in paragraph II.D. above; (b) any new disclosure requirements should be based on average amounts rather than balance sheet date amounts; and (c) any newly-required disclosures should be made in the MD&A rather than in the basic financial statements and financial statement footnotes.

As stated in paragraph II.D. above, registrants do have an obligation to include in their MD&A disclosure of any material impact on liquidity or operations and risk resulting from involvement with repurchase and reverse repurchase agreements. In addressing the impact on operations for any given period, registrants would, of course, have to consider all transactions during the period—not only those existing at the balance sheet date.

Notwithstanding these previously-existing requirements (which are unaffected by the amendments being adopted today), the Commission continues to believe, after considering the balance of respondents' views, that: (a) More useful and uniform disclosures by registrants are necessary for enabling shareholders to better assess significant involvement with repurchase and reverse repurchase agreements and the resultant risk (as defined), if any; and (b) given that the disclosures are required only where significant amounts are involved, these disclosures should be made in the basic financial statements and financial statement footnotes.

IV. Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act")[15] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments and additions to Regulation S–X in light of the standard cited in Section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

[13] If such delivery is to the same counterparty to the reverse repurchase agreements, however, such delivery would have to be in exchange for the approximate market value of the assets delivered in order for the risk not to be affected.

[14] One respondent suggested that market value should be computed as of the date of inception of the reverse repurchase agreement and not reconsidered subsequently. The Commission rejects this suggestion and notes that one of the primary objectives of these amendments is disclosure of registrants' efforts to ensure that market value remains sufficient over the life of the agreement.

[15] 15 U.S.C. 78w(a)(2).

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act [15 U.S.C. 605(b)], the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

VI. 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. Add a new § 501.07, entitled "Disclosures Relating to Use of Repurchase and Reverse Repurchase Agreements".

2. Include in § 501.07 the following two paragraphs (which are taken from discussions in previous sections of this Release):

Under Item 303 of Regulation S–K, registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements. In addressing the impact on operations for any given period, registrants would, of course, have to consider all transactions during the period—not only those existing at the balance sheet date.

Repurchase and reverse repurchase agreements can be timed to close at particular points in time. This fact does not affect the obligation to include in the MD&A appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements.

Material deviations from a stated policy regarding taking possession of assets under reverse repurchase agreements are required to be disclosed. Also, the disclosure of provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of counterparty default must be sufficiently detailed to accurately reflect registrants' positions.

VII. Statutory Basis of Amendments

These amendments are being adopted pursuant to authority in sections 6, 7, 8, 19 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s and 77s(a)] 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 sections 8, 30, 31 and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37(a)] of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

VIII. Text of Amendments

The Commission hereby amends 17 CFR Chapter II 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. The authority citation for Part 210 is revised to read as follows:

Authority: Sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); 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), 78w(a); sections 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); and sections 8, 20, 30, 31 and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

§ 210.4–08 [Amended]

2. By adding paragraph (m) to § 210.4–08 to read as follows:

* * * * *

(m) *Repurchase and reverse repurchase agreements.* (1) *Repurchase agreements (assets sold under agreements to repurchase).* (i) If, as of the most recent balance sheet date, the carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under agreements to repurchase ("repurchase agreements") exceeds 10% of total assets, disclose separately in the balance sheet the aggregate amount of liabilities incurred pursuant to repurchase agreements including accrued interest payable thereon.

(ii)(A) If, as of the most recent balance sheet date, the carrying amount (or market value, if higher than the carrying amount) of securities or other assets sold under repurchase agreements, other than securities or assets specified in (1)(ii)(B) of this section, exceeds 10% of total assets, disclose in an appropriately captioned footnote containing a tabular presentation, segregated as to type of such securities or assets sold under agreements to repurchase (e.g., U.S. Treasury obligations, U.S. Government agency obligations and loans), the following information as of the balance sheet date for each such agreement or group of agreements (other than agreements involving securities or assets specified in (1)(ii)(B) of this section) maturing (*1*) overnight; (*2*) term up to 30 days; (*3*) term of 30 to 90 days; (*4*) term over 90 days and (*5*) demand:

(i) The carrying amount and market value of the assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit under the repurchase agreements; and

(ii) The repurchase liability associated with such transaction or group of transactions and the interest rate(s) thereon.

(B) For purposes of (1)(ii)(A) of this section only, do not include securities or other assets for which unrealized changes in market value are reported in current income or which have been obtained under reverse repurchase agreements.

(iii) If, as of the most recent balance sheet date, the amount at risk under repurchase agreements with any individual counterparty or group of related counterparties exceeds 10% of stockholders' equity (or in the case of investment companies, net asset value), disclose the name of each such counterparty or group of related counterparties, the amount at risk with each, and the weighted average maturity of the repurchase agreements with each. The amount at risk under repurchase agreements is defined as the excess of carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation, over the amount of the repurchase liability (adjusted for accrued interest). (Cash deposits in connection with repurchase agreements shall not be reported as unrestricted cash pursuant to rule 5–02.1.)

(2) *Reverse repurchase agreements (assets purchased under agreements to resell).* (i) If, as of the most recent balance sheet date, the aggregate carrying amount of "reverse repurchase agreements" (securities or other assets purchased under agreements to resell) exceeds 10% of total assets: (A) disclose separately such amount in the balance sheet; and (B) disclose in an appropriately captioned footnote: (*1*) the

registrant's policy with regard to taking possession of securities or other assets purchased under agreements to resell; and (2) whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions.

(ii) If, as of the most recent balance sheet date, the amount at risk under reverse repurchase agreements with any individual counterparty or group of related counterparties exceeds 10% of stockholders' equity (or in the case of investment companies, net asset value), disclose the name of each such counterparty or group of related counterparties, the amount at risk with each, and the weighted average maturity of the reverse repurchase agreements with each. The amount at risk under reverse repurchase agreements is defined as the excess of the carrying amount of the reverse repurchase agreements over the market value of assets delivered pursuant to the agreements by the counterparty to the registrant (or to a third party agent that has affirmatively agreed to act on behalf of the registrant) and not returned to the counterparty, exept in exchange for their approximate market value in a separate transaction.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 22, 1986.

[FR Doc. 86-2085 Filed 1-29-86; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Project Cost Limits Under Blanket Certificates; Publication

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(t), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1986.

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

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued January 27, 1986.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect to 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(t) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1986, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000

[FR Doc. 86-2073 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0376]

Indirect Food Additives: Polymers

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 use of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene terephthalate. This action responds to a petition filed by American Enka Co.

DATES: Effective January 30, 1986; objections by March 3, 1986.

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: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 4, 1985 (50 FR 35867), FDA announced that a petition (FAP 5B3871) had been filed by American Enka Co., Enka, NC 28728, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for an increase in the weight percent of polymer units derived from ethylene terephthalate in ethylene terephthalate-isophthalate copolymers.

On review, FDA has determined that the notice of filing did not adequately describe the petition. FDA's regulations currently provide for the use of ethylene terephthalate-isophthalate copolymers that contain 77 to 83 weight percent of polymer units derived from ethylene terephthalate. The petition sought approval of certain uses of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene terephthalate.

FDA has evaluated the data in the petition and other relevant material. Based on its evaluation, the agency concludes that the use of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene

terephthalate is safe in certain circumstances, and that the regulations should be amended as set forth below.

FDA is also making an editorial change in the paragraph on ethylene terephthalate-isophthalate copolymers.

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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), 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. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before March 3, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. 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 suport 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 document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subject, in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1630 is amended in paragraph (e)(4)(i) by revising the entry for "Ethylene terephthalate-isophthalate copolymers" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

LIST OF SUBSTANCES AND LIMITATIONS

(i) Base sheet:

* * * * *

Ethylene terephthalate-isophthalate copolymers: Prepared by the condensation of dimethyl terephthalate or terephthalic acid and dimethyl isophthalate or isophthalic acid with ethylene glycol. The finished copolymers contain either (*a*) 77–83 weight percent or (*b*) at least 98 weight percent of polymer units derived from ethylene terephthalate. Copolymers containing a minimum of 98 weight percent of polymer units derived from ethylene terephthalate are limited to use with food of types I, II, IV–B, VI–B, VII–B, and VIII as described in Table 1 of § 176.170(c) of this chapter and under use conditions E, F, and G, as described in Table 2 of § 176.170(c) of this chapter.

* * * * *

Dated: January 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–1991 Filed 1–29–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 600, 606, 610, 620, 630, 640, and 660

[Docket No. 80N–0053]

Changes in Proper Names of Certain Biological Products; Delay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a delay in the effective date for a final rule concerning changes in proper names for certain biological products. The new effective date for blood and blood components intended for transfusion is September 2, 1986, rather than January 29, 1986. The agency is taking this action in response to requests from major blood banking organizations to reduce economic burdens caused by additional labeling changes required by a second final rule affecting blood and blood components.

DATES: Effective date: September 2, 1986, for all blood and blood components intended for transfusion initially introduced or initially delivered for introduction into interstate commerce. Comments by March 3, 1986.

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

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 29, 1985 (50 FR 4128), FDA amended the proper names for certain biological products by updating all applicable regulations in 21 CFR Parts 600 through 660 to reflect the new proper names. Most of the proper name changes in the final rule affect blood and blood products. In addition, the final rule requires name changes for certain other viral and bacterial products. The final rule has an effective date of January 29, 1986, for required labeling changes.

In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA published a final rule on uniform blood labeling which requires additional labeling changes in the container labels and in the instruction circulars for blood and blood components intended for transfusion. The final rule on uniform

blood labeling has an effective date of September 2, 1986.

Major blood banking organizations have recently requested FDA to delay the effective date of the proper names final rule to coincide with the effective date of the uniform blood labeling final rule to minimize required labeling changes. Because both final rules require labeling changes for blood and blood components, FDA believes that the economic impact placed on blood banking establishments for printing new labels twice in a 7-month period should be eased. Extension of the effective date of the proper names final rule as it applies to blood and blood products intended for transfusion to coincide with the effective date of the uniform blood labeling rule will require manufacturers to change their labeling only once during this short period, thus reducing waste. FDA believes that a single effective date for these products will provide for more efficient implementation of both rules by manufacturers. FDA's reason for the proper names rule was to reduce the length of a name, to identify a product more accurately, or to make the name more consistent with the name of the same product in the United States Pharmacopeia or in the United States Adopted Names. FDA notes that the extension of the effective date of this rule to September 2, 1986, will not have any adverse public health consequences. Accordingly, FDA is announcing a delay of the effective date until September 2, 1986, for all blood and blood components that are affected by both final rules. These products include whole blood (21 CFR 640.1), red blood cells (21 CFR 640.10), platelets (21 CFR 640.20), plasma (21 CFR 640.30), and cryoprecipitated AHF (21 CFR 640.50). The effective date for proper name changes for all products other than blood and blood products intended for transfusion remains January 29, 1986.

The Commissioner of Food and Drugs finds for good cause under 5 U.S.C. 553(b)(B) and 21 CFR 10.40(e)(1) that notice and comment rulemaking to extend the effective date is impracticable, contrary to the public interest, and unnecessary. Because of the imminence of the effective date, the significant economic burden that would be imposed on manufacturers if required to relabel blood and blood products intended for transfusion twice within a 7-month period, the efficiency of a single effective date, and the relatively short delay of the effective date, the Commissioner finds good cause exists to delay the effective date for blood and blood products intended for transfusion to coincide with the September 2, 1986, effective date for uniform blood labeling.

The agency, nevertheless, is providing a 30-day comment period during which it will accept comments on the rule. Interested persons may, on or before March 3, 1986, submit to the Dockets Management Branch (address above) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If FDA decides on the basis of the comments received that any change is necessary, it will publish the change in the **Federal Register.**

Dated: January 28, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-2168 Filed 1-28-86; 3:31 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8070]

Income Tax; Coordination of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses Under Section 1092

Correction

In FR Doc. 86-726, beginning on page 1785, in the issue of Wednesday, January 15, 1986, make the following corrections on page 1787:

1. In the second column, in § 1.1092(b)-1T(g), Example (21), last line, the word "in" should read "to".

2. In the third column, the second line, after the word acquired, add the word "on".

3. In the third column, in Example (24), in the twenty-second line, "1986" is removed.

BILLING CODE 1505-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-222; Re: Notice No. 564]

Alcoholic Beverages; Application of State Laws and Regulations to Wine Labeled With a Viticultural Area Appellation of Origin

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations on labeling wines with American Viticultural Area appellations of origin. There is no longer a Federal requirement that wines comply with State laws and regulations when labeled with American Viticultural Area appellations of origin. Under the previous requirements, a Federal regulation imposed the laws and regulations of one state upon activities occurring in another state in cases involving multistate viticultural areas. This imposed an unfair compliance burden on wineries located in multistate viticultural areas in comparison to wineries located in other viticultural areas. For example, wines produced in the Washington portion of the multistate Columbia Valley viticultural area were required, by Federal regulation, to comply with the laws and regulations of the State of Oregon. The regulations of Oregon are more restrictive than the regulations of Washington, and the Oregon requirements should not apply to wine made entirely within the State of Washington. Therefore, the requirement to comply with State laws and regulations is removed as a Federal requirement. The State laws and regulations remain in effect and will continue to be enforced by the agencies of the states involved in winemaking.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background, T.D. ATF-53

Prior to Treasury Decision ATF-53 [August 23, 1978, 43 FR 37675], appellations of origin for domestic wines were generally names of states or in a few cases "regions" or "places." The previous regulation required those wines

to be made in conformity with the laws and regulations of such "place" or "region" governing the composition, manufacture and designation of wines. Since many domestic wines claimed State appellations of origin such as "California" or "New York," this regulation generally required compliance with State laws and regulations. This policy recognized the state interest in insuring the quality and integrity of wine bearing that state's name.

With T.D. ATF–53, viticultural areas were established as appellations of origin. American viticultural areas are defined in § 4.25a(e)(1)(i) as delimited grape growing regions distinguishable by geographical features, and recognized in 27 CFR Part 9. Because they are grape growing regions rather than political divisions such as counties or states, their boundaries have no relationship to political boundaries. Ten approved viticultural areas occupy portions of two or more states.

One Federal requirement for use of an American viticultural area was conformity with the laws and regulations of the state in which the viticultural area was located [§ 4.25a(e)(3)(v)]. Thus, wine claiming a "Napa Valley" appellation was required by Federal regulation to conform to California law. Similarly, this Federal requirement existed when a viticultural area encompasses more than one state. For example, wine claiming a "Lake Erie" viticultural area appellation was required to conform to New York, Pennsylvania, and Ohio laws and regulations.

Multistate Viticultural Areas

The Columbia Valley viticultural area, approved in T.D. ATF–190 [November 13, 1984, 48 FR 38497], surfaced a problem with the labeling of wine with multistate viticultural areas. This viticultural area was established in portions of both Oregon and Washington on the basis of geographical features which affect viticultural features. However, laws of both states require an appropriate regulatory agency to issue standards of identity, and regulations of Oregon and Washington differ greatly regarding the production and labeling of wine. Oregon regulations are more stringent than Federal regulations. Since § 4.25a(e)(3)(v) required compliance with laws and regulations of *all* states within a multistate viticultural area, regardless of where the wine is fermented or finished, wine made from grapes originating and fermented in Washington, and finished and bottled within Washington was, nevertheless, subjected to Oregon law and regulations if the wine claimed a multistate viticultural area appellation such as Columbia Valley.

As a result, the Federal regulation appeared to place an unfair burden on some wineries within multistate viticultural areas by subjecting a winery in one state to laws and regulations issued by another state even when the grapes or wine do not enter the other state during the course of wine production. A Federal requirement for compliance with State laws and regulations is both unnecessary and difficult for the Federal Government to enforce due to the multitude of state and local laws and regulations.

Moreover, ATF does not believe that Federal regulation should impose the State laws or regulations of one state upon transactions occurring in other states. State laws and regulations of the state in which the wine was fermented or finished will, of course, continue to apply to the producing winery. These state laws and regulations are enforced by the state involved.

The deletion of this Federal requirement has no bearing on wines labeled with the name of a viticultural area located entirely within a single state. Since § 4.25a(e)(3)(iv) requires a wine claiming a viticultural area appellation to be fully finished within one of the states in which the viticultural area is located, State laws or regulations of that state would apply at the bonded winery where the wine is produced.

Rulemaking Procedure

Based on the foregoing, ATF published a notice of proposed rulemaking [Notice No. 564, May 8, 1985, 50 FR 19384], proposing to amend § 4.25a(e)(3) by deleting paragraph (v) which required compliance with the laws and regulations of all of the States contained in the viticultural area. In response to Notice No. 564, ATF received one comment from Heublein, Inc., supporting the proposed change. Therefore, paragraph (e)(3)(v) is removed from § 4.25a as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

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

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal authors of this document are Charles N. Bacon and John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

27 CFR PART 4—LABELING AND ADVERTISING OF WINE is amended as follows:

1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 4.25a [Amended]

2. Section 4.25a is amended—

(a) By adding the word "and" after the semi-colon at the end of paragraph (e)(3)(iii),

(b) By replacing the semi-colon and the word "and" with a period at the end of paragraph (e)(3)(iv), and

(c) By removing paragraph (e)(3)(v).

Signed: December 17, 1985.

Stephen E. Higgins,

Director.

Approved: January 10, 1986.

Francis A. Keating, II,

Assistant Secretary (Enforcement and Operations)

[FR Doc. 86-1878 Filed 1-29-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD 11-85-05]

Safety Zone; Santa Cruz Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A safety zone is being established in the territorial waters south of Santa Cruz Island. Tests of submerged and semisubmerged vessels will be conducted during a three month period. There will also be placement of fixed underwater sound systems making transit, anchoring or fishing hazardous. Limiting access to this area will serve to protect vessels and sensitive underwater gear.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) John Czaimanske, U.S. Coast Guard Reserve, Marine Safety Division, Eleventh Coast Guard District, Long Beach, California. Telephone: (213) 590-2301.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days from the date of publication. This regulation is exempt from certain provisions of 5 U.S.C. 553 because it involves a foreign or military affairs function of the United States. Following normal rulemaking procedures also would have been impracticable because the request for this regulation was not received until December 15, 1985 and there was not sufficient time remaining to publish a proposal in advance of the events for which the regulation is needed. Furthermore, there was not sufficient time to provide for a delayed effective date. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) John Czamanske, U.S. Coast Guard Reserve, Project Officer, Eleventh Coast Guard District Marine Safety Division and Lieutenant Joseph R. McFaul, U.S. Coast Guard, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation establishes a safety zone in territorial waters south of Santa Cruz Island, California. Tests of submerged and semi-submerged vessels will be conducted. Much of the testing equipment will be undetectable by surface vessels making transit, anchoring or fishing hazardous. Limiting access to the area will protect vessels and sensitive equipment. Similar safety zones have been established in this area in the past year (50 FR 35555). Entry into the zone will be permitted if testing permits and there are no hazards to transiting vessels or test equipment. A "hot-line" will be established so that adverse effects on potential users will be minimized. Additionally, users will be informed by the Local Notice of Mariners if there will be prolonged periods where entry will be permitted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security Measures, Vessels, Waterways:

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: (33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.T1199 is added to read as follows:

§ 165.T1199 Santa Cruz Island.

(a) A safety zone is established to include all waters enclosed within lines drawn from the following points: beginning from a point on land located approximately at Latitude 33-57-33 N, Longitude 119-43-15 W, then due south to a point on the territorial sea located approximately at Latitude 33-54-33 N, Longitude 119-43-15 W, then following the limit of the territorial sea in an easterly direction to a point approximately located at Latitude 33-57-15 N, Longitude 119-31-44 W, then due north to a point on land located approximately at Latitude 33-59-42 N, Longitude 119-33-45 W, then returning along the shore to the beginning point.

(b) No person may swim, skin dive or scuba dive in the waters within the safety zone.

(c) No vessel may navigate, transit, fish, anchor or drift in the waters within the safety zone.

(d) Any vessel within the zone shall follow the directions of the patrolling Coast Guard cutter.

(e) In accordance with the general provisions in § 165.23 of this part, entry into this zone is prohibited unless authorized by the District Commander.

(f) This regulation is effective on January 27, 1986 and remains continuously in force until April 30, 1986.

Dated: January 23, 1986

A.B. Berau,

Rear Admiral (lower half), U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 86-2086 Filed 1-29-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 85-11]

Security Zone Regulations; San Diego Bay, CA; Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station San Diego, Coronado, California, consisting of the water area within 100 feet (30 meters) of Bravo Pier. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island.

EFFECTIVE DATE: This regulation is effective on March 3, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: On 25 November 1985, the Coast Guard

published a notice of proposed rulemaking in the **Federal Register** for these regulations (50 FR 48434).

Interested persons were invited to submit comments, and one comment was received.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

One telephone commenter expressed the view that reducing the usable water area available for pleasure boats to pass Bravo pier would cause a hardship to local boaters. It was pointed out that the bay at this point is approximately 2400 feet wide (the usable water area) and that this regulation would affect only 100 feet of this width. The commenter agreed that only a small area was affected and that the national security considerations were significant. No written comments were received.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a very small area outside all fairways and shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be no effect on routine navigation.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 3, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. Section 165.1106 is added to read as follows:

§ 165.1106 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 feet (30 meters) of Bravo Pier, bounded by the following points:

(1) Latitude 32°41'51.3" N, longitude 117°13'34.0" W;
(2) Latitude 32°41'51.3" N, longitude 117°13'38.5" W;
(3) Latitude 32°41'45.8" N, longitude 117°13'38.5" W; and
(4) Latitude 32°41'45.8" N, longitude 117°13'35.0" W.

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: January 22, 1986.

E. A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–2088 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–2962–4; GA–008]

Approval and Promulgation of Implementation Plans; Georgia; Extended VOC Compliance Schedule for GM's Lakewood Assembly Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today disapproving a State Implementation Plan (SIP) revision submitted by Georgia, pursuant to the requirements of Part D of Title I of the Clean Air Act of 1977, for the control of volatile organic compound (VOC) emissions. The revision provided an extended compliance schedule for General Motors' Lakewood, Geogria Assembly Plant. Under the proposed revision General Motors would have until 1987 to comply with Georgia rule 391–1–.02(t), VOC emissions from Automobile and Light Duty Truck Manufacturing. EPA is disapproving the SIP revision because the facility is located in an ozone nonattainment area without an approvable attainment demonstration.

DATE: This action is effective March 3, 1986.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

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

Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street SW., Atlanta, Georgia 30334

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Cook, Air Management Branch, EPA Region IV, at the above address, telephone (404) 881–2864 (FTS 257–2864).

SUPPLEMENTARY INFORMATION: On December 18, 1984 (49 FR 49114), EPA proposed to disapprove a Georgia SIP revision involving the VOC compliance schedule for the General Motors assembly plant in Lakewood, Georgia. Briefly, the revision extended the compliance date for certain miscellaneous metal parts coating and top coating operations to 1987.

Specifically, General Motors (GM) requested a delay in the final compliance date for the electrophoretic (ELPO) prime operation for passenger cars at their Lakewood Plant from December 31, 1982, to December 31, 1987. Such a delay would be accompanied by a delay in the December 31, 1982 interim date for conversion to a higher solids primer-surfacer coating since that conversion would accompany the installation of the ELPO prime system. In other words, all of the interim dates in GM's previously agreed to schedule (part of GM's national agreement with EPA) would be changed to a final compliance date of December 31, 1987.

Additionally, GM proposed to delay compliance of certain coating operations governed by Rule 391–3–1.02(ii), Surface Coating of Miscellaneous Metal Parts and Products, of the Georgia Rules for Air Quality Control. The largest VOC emitter of such operations is the flow coat prime operation which is used for the priming of both hoods and fenders and many miscellaneous small parts. Due to the nature of the flow coat process, a large quantity of organic solvent has to be added to the flow coat bath and, consequently, the "pounds of VOC per gallon coating applied

excluding water" is higher than State regulations allow.

GM indicated it would probably have to convert to a different system of priming in order to comply. Such a conversion (e.g., to ELPO prime) would involve a multimillion dollar expenditure. When the car body ELPO prime system goes into operation by December 31, 1987, the hoods and fenders would be primed along with the car bodies. Thus, the State of Georgia felt it was appropriate to parallel miscellaneous metal parts compliance with that of the car body ELPO prime system. Therefore, December 31, 1987, was included in the new GM permits for the final compliance date for the flow coat prime operation.

General Motors further requested an indefinite delay in compliance for two other miscellaneous metal parts coating operations (i.e., the zinc-rich primer application and the anti-corrosion coating application). Total emissions from these two sources equaled 24 tons per year.

The state concurred in the request, but conditioned the company's permit so that GM was required to replace those coatings with lower VOC coatings upon development. All other affected miscellaneous metal parts coating operations, except those mentioned above, came into compliance on or before September 1, 1983.

As EPA reviewed the State's proposed extended compliance schedule for this VOC source located in the Atlanta ozone nonattainment area, the 1982 summer ozone monitoring data began to raise concerns because of the magnitude and number of exceedances being recorded. It became apparent that the Atlanta nonattainment area was not going to demonstrate attainment by December 31, 1982. On February 24, 1984, EPA called for a revision to Atlanta's ozone state implementation plan (SIP) under authority of section 110(a)(2)(H) of the Clean Act, as amended in 1977.

EPA policy (46 FR 61387, October 20, 1981) does allow approval of a deferred compliance schedule for ELPO past 1984 in a few specific circumstances (e.g., where significant expenses can be eliminated, not just postponed at plants that are scheduled for renovation, scheduled for shutdown, or which propose to use an alternate compliance technique). However, there was no evidence in the record that GM-Lakewood met the policy's requirements. Since the extension for GM did not meet the October 20, 1981, policy for extensions, and since Atlanta is an ozone nonattainment area without an approvable attainment demonstration, EPA proposed disapproval of the requested relaxation.

Two comments were received on this proposal, one from the Natural Resources Defense Council, Inc. (NRDC), and one from General Motors Corporation (GM).

NRDC Comment

NRDC expressed support for EPA's proposed disapproval of the extended compliance schedule. In NRDC's view it would be inappropriate to approve any relaxation of a SIP for an area without an approved demonstration of attainment.

GM's Comment

GM addressed two parts of the proposal. First, they wanted to clarify the record as to the fact that the top coat and final repair coat compliance date for the Lakewood Assembly plant was always December 31, 1987. This date was approved as part of the GM National Agreement. GM felt compelled to make the clarification because the wording of the proposal incorrectly implied that compliance for topcoating and repair coating operations were being postponed, along with priming and surfacer operations, when, in fact, they were always set at 1987.

Second, GM wanted to note that the purpose in requesting the delay in the compliance date for electrodeposition prime (EDP) was to eliminate significant capital expenditures in a situation involving shutdown or renovation consistent with EPA's previously cited October 20, 1981, **Federal Register** policy statement regarding extension of EDP compliance dates beyond 1984. That policy statement essentially says that EPA will consider a delayed compliance schedule going to December 1987 for EDP operations as expeditious if the delay would eliminate significant costs. Specific circumstances for applying the policy were also outlined (i.e., the plant is applying an alternate compliance technique; scheduled for shutdown; scheduled for renovation). Accordingly, GM claimed that they would realize an estimated ten million dollars saving by not constructing a conveyor line from their car assembly line to the existing EDP tank located on the plant's inactive truck assembly line. This savings would be realized if GM made the decision to shut down the Lakewood plant instead of reconstruction and modernizing it. They stated further that even if they renovated the plant, the conveyorized system would not be needed, and so the ten million dollars expense could also be saved under the reconstruction option.

EPA Response

EPA concurs with GM's first comment and has modified this notice to clearly indicate that prime operations are the only affected operations proposed for delay in the existing schedule. With respect to GM's second comment, EPA's position is that the policy statement of October 20, 1981 (46 FR 51387), explicitly states that extensions beyond 1984 would be found to be appropriate where a plant is "scheduled for renovation or closing . . . or where a plant applying an alternative compliance technique can eliminate (not just postpone) significant expense." GM's proposal indicated a specific dollar amount of savings but did not provide a "specific" shutdown or renovation date. The proposal also failed to specify an alternative compliance technique. Accordingly, the SIP record does not support application of this policy.

Moreover, EPA's October 20, 1981, policy states that, among other things, in order to approve extensions for automotive assembly plant paint shop operations, the "SIPs will need to assure continued compliance with the statutory provisions of sections 110 and 172 of the Clean Air Act. These revisions will need to be evaluated in light of their impact on the overall plan and the individual elements, including emission reductions necessary to demonstrate reasonable further progress toward attainment of standards."

Since Atlanta clearly has a shortfall in emission reductions needed to attain the national ambient air quality standard for ozone (EPA called for an ozone plan revision on February 24, 1984) and the State is in the process of revising their ozone SIP, it would be inappropriate for EPA to approve a compliance date extension in the absence of an approvable attainment demonstration.

Final Action

Based on the foregoing, EPA hereby disapproves the extended compliance schedule for General Motors' Lakewood Assembly Plant.

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

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Hydrocarbons.

Dated: January 22, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart L—Georgia

2. Section 52.576 is amended by adding paragraph (b) as follows:

§ 52.576 Compliance schedules.

* * * * *

(b) The extended compliance schedule for the General Motors Lakewood Assembly Plant submitted on July 30, 1982, is disapproved because the State has failed to show that the schedule would not interfere with the attainment of the ozone standard in the Atlanta nonattainment area.

[FR Doc. 86–2039 Filed 1–29–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–5–FRL–2963–4]

Illinois: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Illinois' Application for Final Authorization.

SUMMARY: Illinois has applied for final authorization under the Resource Conservation and Recovery Act, as amended (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Illinois' application and found it includes all the information necessary for final authorization. U.S. EPA is granting final authorization to the State of Illinois to operate its hazardous waste management program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: The final authorization for Illinois takes effect 1:00 p.m., Eastern Standard Time on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Russell, Illinois Regulatory Specialist, Solid Waste Branch, U.S. EPA Region V, 230 South Dearborn, Chicago, Illinois, 60604, (312) 886–6940 (FTS: 8–886–6940).

SUPPLEMENTARY INFORMATION: Section 3006 of the RCRA allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) Be no less "stringent" than the Federal program; (3) Be consistent with the Federal program and other authorized State programs; (4) Provide for adequate enforcement authority; and (5) Provide for public participation in the permit process. (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On July 29, 1985, the State of Illinois submitted a complete application to obtain final authorization to administer the RCRA program. After completion of a comprehensive review of the State's official application, U.S. EPA forwarded comments to the State on September 10, 1985. These comments reflected the remaining areas which the State needed to further address. Illinois and the Attorney General responded satisfactorily to U.S EPA's comments in letters dated October 7, 24, and November 14, 1985. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capability for future program implementation. The Capability Assessment together with the Letter of Intent, highlighted the areas in which Illinois needed improvement and the measures U.S EPA and Illinois will take to ensure that these improvements are implemented. These areas were Closure Management and Maintenance of Enforcement Related Records. Since the publication of the tentative determination, Region V has continued to monitor the progress in these areas as well as in escalation of enforcement. Region V has found that Illinois continues to make progress in these areas. Therefore, following a detailed review of the complete application and the development of a Capability Assessment, U.S EPA published a notice on November 19, 1985, announcing its tentative determination to grant final authorization to the State of Illinois. Further background on the tentative determination to grant final authorization appears in the November 19, 1985 **Federal Register**, (50 FR 47566). That **Federal Register** notice summarized all major issues raised in U.S EPA's review of the complete application.

Along with the notice of tentative determination, U.S EPA announced the availability of Illinois' application for public inspection and copying; the date of the public comment period; the date of the public hearing on Illinois' application; and U.S EPA's tentative determination to grant final authorization. A Public Notice ran in four newspapers in Illinois and one newspaper in Missouri. This Notice was mailed to all individuals and organizations on the Region V Illinois mailing list. The public hearing was held on December 20, 1985, in Chicago, Illinois. Fifteen people attended the public hearing. Five oral and eight written comments were presented at the public hearing or during the public comment period. U.S EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from Barbara Russell, Illinois Regulatory Specialist, at the United States Environmental Protection Agency, 230 South Dearborn, 5HS–JCK–13, Chicago, Illinois, (312) 886–6940.

Decision

After reviewing the public comments and the changes the State has made to its application since the tentative decision, I conclude that Illinois' application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Illinois is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Illinois now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Illinois also has primary enforcement responsibility, although U.S EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Illinois is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S EPA.

As stated above, Illinois' authority to operate a hazardous waste program

under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S EPA. The Federal requirements no longer applied in the authorized State, and U.S EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Illinois. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S EPA will administer and enforce them in Illinois until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Illinois.

Illinois is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S EPA's implementation of the HSWA under a Cooperative Agreement.

U.S EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

EFFECTIVE DATE: 40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect 2 weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date January 31, 1986, is necessary in this instance. Illinois currently has interim authorization for Phase I of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Illinois must have authority to administer the final authorization program, on that date, or the RCRA program will revert to EPA. To avoid the problem of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

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

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7.

Dated: January 21, 1986.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 86-2037 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-10-FRL-2963-6]

Oregon; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Oregon's application for final authorization.

SUMMARY: The State of Oregon has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Oregon's application and has reached a final determination that Oregon's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, in lieu of the Federal hazardous waste program in its jurisdiction, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for Oregon shall be effective at 1 p.m., e.s.t., on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Hanline, M/S 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-2858 (FTS 399-2858).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On June 1, 1984, Oregon submitted a complete application for final authorization. On December 6, 1985, EPA published a tentative decision announcing its intent to grant Oregon final authorization. Further background information on EPA's tentative decision to grant final authorization appears at 50 FR 49947, December 6, 1985.

In addition to announcing its tentative determination, EPA announced the availability of the application for public review and comment. Also it was announced that a public hearing would

be held if sufficient public interest was expressed. No requests for a hearing were received. Only one letter of comment was submitted—a general statement in support of EPA's tentative decision.

II. Decision

I conclude that Oregon's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Oregon now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Oregon also has primary enforcement responsibility, although EPA retains the right to conduct inspections and gather information under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. Oregon is not authorized by the Federal government to operate the RCRA program on Indian lands; this authority remains with EPA.

As stated above, Oregon's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Oregon. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Oregon until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Oregon.

This authorization of Oregon's hazardous waste program includes two Federal regulatory promulgations pursuant to the HSWA—the listing of and special management standards for dioxin-containing wastes (50 FR 1978) and the paint filter liquids test (50 FR 18370). Thus the Federal program in those areas will not apply to Oregon. Once Oregon is authorized to implement other HSWA requirements or prohibitions, the State program in those areas will operate in lieu of the Federal provisions. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Arrangement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and their effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

III. Effective Date

40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect two weeks after the date of the **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date, January 31, 1986, is necessary in this instance. Oregon currently has interim authorization for Phase I of the RCRA program. Because interim authorization expires by statute on January 31, 1986, Oregon must have final authority to administer the finally authorized program on that date or the RCRA program will revert to EPA. To avoid the problems caused by a short term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 27, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–2036 Filed 1–29–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[SW–1–FRL–2961–5]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Rhode Island's Application for Final Authorization.

SUMMARY: Rhode Island has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Rhode Island's application and has reached a final determination that Rhode Island's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Rhode Island shall be effective at 1:00

p.m. Eastern Standard Time on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, State Waste Programs Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, MA 02203, telephone: (617) 223–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On June 29 1984, Rhode Island submitted an official application to obtain final authorization to administer the RCRA program. On December 3, 1985, EPA published a tentative decision announcing its intent to grant Rhode Island final authorization. Further background on the tentative decision to grant authorization appears at **Federal Register** Vol. 50, No. 232, pages 49561–49563, December 3, 1985.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application if sufficient public interest in holding a hearing is expressed. The public hearing was cancelled since no public interest in holding a hearing was communicated to EPA.

The only outstanding issue at the time of publication of the tentative determination was the necessity for the draft regulatory amendments to be legally adopted and effective prior to this final determination being published. The regulatory amendments were legally adopted on January 9, 1986, and will become effective on January 29, 1986.

II. Decision

After reviewing the public comments and the changes the State has made to its application/program since the tentative decision, I conclude that Rhode Island's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Rhode Island is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Rhode Island now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Rhode Island also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. Rhode Island is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

As stated above, Rhode Island's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Rhode Island. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Rhode Island until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Rhode Island.

Rhode Island is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

III. Effective Date

40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect two weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date—January 31, 1986—is necessary in this instance. Rhode Island currently has interim authorization for Phases I and IIA of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Rhode Island must have authority to administer the program under final authorization on that date or the RCRA program will revert to EPA. To avoid the problems of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Inter-governmental

relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 9, 1986.

Michael R. Deland,

Regional Administrator.

[FR Doc. 86-2033 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-10-FRL-2963-5]

Washington; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Washington's application for final authorization.

SUMMARY: The State of Washington has applied for final authrorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and has reached a final determination that Washington's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, in lieu of the Federal hazardous waste program in its jurisdiction, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for Washington shall be effective at 1 p.m. e.s.t. on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael A. Bussell, M/S 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-2857, (FTS 399-2857).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must: (1) B "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On July 2, 1984, Washington submitted an official application for final authorization. On December 6, 1985, EPA published a tentative decision announcing its intent to grant Washington final authorization. Further background information on EPA's tentative decision to grant final authorization appears at 50 FR 49949, December 6, 1985.

In addition to announcing its tentative determination, EPA announced the availability of the application for public review and comment. EPA also announced that a public hearing would be held if sufficient public interest was expressed.

II. Response to Public Comments

On December 6, 1985, (50 FR 49949), a notice was published in the Federal Register that invited the public to submit written comments on the Washington application by January 6, 1986, and provided for a public hearing if sufficient public interest was expressed in holding a hearing. In addition, EPA published the notice of determination in a sufficient number of newspapers of general circulation to ensure state-wide coverage. Further, EPA mailed these notices to persons on State and EPA mailing lists.

Sufficient public interest in holding a public hearing was not expressed, thus, a hearing was not held. However, several written comments were received, none of which opposed EPA's tentative determination. One commentor supported EPA's tentative determination citing considerable benefit to both the public and regulated community. Another commentor, while not opposing EPA's tentative decision, expressed concern on the appropriateness of State enforcement actions and State compliance inspection capability. This commentor also stated the need for a strong Federal compliance and enforcement oversight role in Washington, after authorization. Finally, four commentors supported EPA's decision that the State's demonstration of jurisdiction is insufficient for EPA to authorize the State's program for non-Indian hazardous waste management activites on Indian lands, and EPA's tentative decision to retain jurisdiction for regulation of all hazardous management activities on Indian lands.

Prior to publishing its tentative determination to authorize Washington, EPA conducted a capability assessment of the State's hazardous waste compliance and enforcement programs. As the result, EPA found that Washington has made significant progress in the implementation of their compliance and enforcement programs in the fiscal year (FY) 1985. More specifically, substantial improvement was demonstrated in the quality of compliance inspections and in the appropriateness and timeliness of enforcement follow-up. Furthermore, in FY 85, the State developed an enforcement response policy that provides for consistent and predictable enforcement response. To assure continued improvement in State compliance inspection and enforcement efforts, the State and EPA have jointly developed and signed a Letter of Intent that addresses specific State and EPA measures, along with schedules, to enhance State compliance and enforcement program capabilities over time.

After authorization, EPA will continue to maintain an oversight role in Washington to assure that the goals of RCRA are being met. EPA will maintain its oversight role in part through the Federal grant process which requires periodic evaluations of State performance and which will provide the support and incentives to assure a quality State program and continued enhancement of State capabilities. Additionally, EPA retains the authority to conduct independent inspections, collect information and initiate enforcement actions. In instances where State enforcement is not timely or appropriate, EPA will exercise this authority.

III. Decision

After reviewing public comments, I conclude that Washington's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program in lieu of the Federal regulatory program promulgated up to December 31, 1984, pursuant to RCRA, 42 U.S.C. 6901 et seq., subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). This means that Washington now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of RCRA program, subject to the HSWA. Washington also has primary enforcement responsibility, although EPA retains the right to gather information and conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA. Washington is not authorized by the Federal government to operate the

RCRA program on Indian lands; this authority remains with EPA.

As stated above, Washington's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still, adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Washington. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Washington until the State receives authorization to do so. When Washington is authorized to implement a HSWA requirement or prohibition, the State program in the area will operate in lieu of the Federal program. Washington is not being authorized today for any requirement implementing the HSWA. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Arrangement. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable RCRA Subtitle C requirements in Washington.

EPA has published a **Federal Register** notice that explains in detail the HSWA and their effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

IV. Indian Lands

In the final authorization application, the State has asserted authority and intent to regulate hazardous waste management activities on Indian lands. The State also asserted such authority in its interim authorization application. For interim authorization, EPA concluded that the State had not adequately demonstrated it had such authority. In granting interim authorization, EPA therefore retained jurisdiction for regulating hazardous waste management activities on Indian lands. The State appealed this decision to the Ninth Circuit Court of Appeals; the Ninth Circuit upheld EPA's decision (Department of Ecology v. EPA, 752 F 2d 1465 (1985)). Based on the Court's decision, the State amended their application to focus their assertion on authority to cover non-Indian hazardous waste management activities on Indian lands. EPA will therefore retain jurisdiction for regulation of hazardous waste management activities on Indian lands. EPA view "Indian lands" to mean all lands (including fee lands) within Indian reservations, dependent Indian communities, and Indian allotments to which Indians hold title.

V. Effective Date

40 CFR 23.4 provides that the grant of final authorization under Section 3006 takes effect two weeks after the date of the **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date, January 31, 1986, is necessary in this instance. Washington currently has interim authorization for Phase 2 A and B of the RCRA program. Because interim authorization expires by statute on January 31, 1986, Washington must have final authority to administer the RCRA program on that date or the program will revert to EPA. To avoid the problems caused by a short term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 27, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–2035 Filed 1–29–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-5-FRL-2963-3]

Wisconsin: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Wisconsin's application for final authorization.

SUMMARY: Wisconsin has applied for final authorization under the Resource Conservation and Recovery Act, as amended (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Wisconsin's application and found it includes all information necessary for RCRA final authorization. U.S. EPA is granting final authorization to the State of Wisconsin to operate its hazardous waste management program, in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: The final authorization for Wisconsin takes effect 1:00 p.m., Eastern Standard Time on Janaury 31, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilk, Wisconsin Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, Chicago, Illinois, 60604, (312) 886–4177 (FTS: 8–886–4177).

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) Be no less "stringent" than the Federal program; (3) Be consistent with the Federal program and other authorized State program; (4) Provide for adequate enforcement authority; and (5) Provide for public participation in the permit process. [Section 3006(b) of the RCRA, 42 U.S.C. 6926(b).]

On July 26, 1985, the State of Wisconsin submitted a complete application to obtain final authorization to administer the RCRA program. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capacity for future program implementation. The Capability Assessment, which documents that Wisconsin continues to demonstrate a commitment to effective implementation of the Hazardous Waste Management program, was transmitted to the State on November 1, 1985, together with a Letter of Intent. The Letter of Intent highlights the areas in which Wisconsin needs improvement and the measures U.S. EPA and Wisconsin will take to ensure that these improvements are implemented. These areas are Compliance and Enforcement, and Management and Reporting. Following the detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, U.S. EPA published a notice in the **Federal Register** on November 27, 1985, announcing its tentative determination to grant final authorization to the State of Wisconsin. Further background on the tentative determination to grant or deny final authorization appears in the November 27, 1985, **Federal Register**, (50 FR 48801). That **Federal Register** notice summarized all major issues raised in U.S. EPA's review of the complete application and the State's responses to these issues.

Along with the notice of tentative determination, U.S. EPA announced the availability of Wisconsin's application for public inspection and copying, the date of the public comment period, the date of the public hearing on Wisconsin's application, and U.S. EPA's tentative determination to grant Wisconsin final authorization. The public hearing was held on December 26, 1985, in Madison, Wisconsin. Twelve people attended the public hearing.

Seven oral or written comments were presented at the public hearing or during the public comment period. U.S. EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from Charles Wilk, Wisconsin Regulatory Specialist, United States Environmental Protection Agency, 230 South Dearborn Street, 5HS–JC–13, Chicago, Illinois, (312) 886–4177.

Decision

After reviewing the public comments and the minor changes the State has made to its application since the tentative decision, I conclude that Wisconsin's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Wisconsin is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984, (Pub. L. 98–616, November 8, 1984) (HSWA). Wisconsin now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program subject to the HSWA. Wisconsin also has primary enforcement responsibility, although U.S. EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Wisconsin is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S. EPA.

As stated above, Wisconsin's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984, HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Wisconsin. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Wisconsin until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program define the applicable Subtitle C requirements in Wisconsin.

Wisconsin is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

EFFECTIVE DATE: 40 CFR 23.4 provides that the grant of final authorization under Section 3006 takes effect 2 weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date January 31, 1986, is necessary in this instance. Wisconsin currently has interim authorization for Phase I of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Wisconsin must have authority to administer the final authorization program, on that date, or the RCRA program will revert to EPA. To avoid the problem of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant

economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6926, and 6974(b), EPA Delegation 8-7.

Dated: January 17, 1986.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 86-2034 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 169, 170, 171, and 173

[CGD 83-005]

Sailing School Vessel Regulations

Correction

In FR Doc. 86-176, beginning on page 888, in the issue of Thursday, January 9, 1986, make the following corrections:

1. On page 891, first column, twenty-eighth line of the second paragraph, "January 11, 1988" should have read "January 9, 1988".

2. On page 897:

a. In the first column, last line, in the entry for § 169.809, "natural" should have read "nautical";

b. In the third column, § 169.107(d), "(publication date)", "(one year from publication date)", and "(two years from publication date)" should have read "January 9, 1986", "January 9, 1987", and "January 9, 1988" respectively.

3. On page 904, first column, § 169.311(a), tenth line, "an" should read "than".

4. On page 911, § 169.567(a), Table 169.567(a) should have appeared as follows:

TABLE 169.567(A)

Space protected	Total number extinguishers required	Type extinguishers permitted		Coast Guard classification
		Medium	Minimum size	
Living space and open boats	1 per 1000 cu. ft. of space	Halon 1211 of 1301	2½ pounds	
		Foam	1¼ gallons	
		Carbon dioxide	4 pounds	B-I
		Dry chemical	2 pounds	
Propulsion machinery space with fixed CO_2 or halon system.	1	Foam	1¼ gallons	B-I
		Carbon dioxide	4 pounfd	
		Dry chemical	2 pounds	
		Halon 1211 or 1301	2½ pounds	
Propulsion machinery space without fixed CO_2 or halon system.	2	Foam	2½ gallons	
		Carbon dioxide	15 pounds	B-II
		Dry chemical	10 pounds	
		Halon 1211 or 1301	10 pounds	
Galley (without fixed system)	1 per 500 cu. ft	Foam	2½ gallons	
		Carbon dioxide	15 pounds	B-II.
		Dry chemical	10 pounds	
		Halon 1211 or 1301	10 pounds	

5. On page 923, second column, in § 170.055(s), "(publication date)", "(one year from publication date)", and "(two years from publication date)" should have read "January 9, 1986", "January 9, 1987", and "January 9, 1988" respectively.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 85-104; RM-4872; FCC 86-35]

Amendment of the Rules To Permit Telephony Operation in the 7075-7100 kHz Frequency Band in the Caribbean Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Final rules; proceeding terminated.

SUMMARY: This document adopts rules to permit telephony operation by FCC-licensed General, Advanced and Amateur Extra operators transmitting from the Commonwealth of Puerto Rico, Navassa Island and the United States Virgin Islands in the 7075-7100 kHz frequency band. These rules are being adopted in order to improve

communications effectiveness between amateur operators licensed by the FCC and by other nations in the Caribbean and surrounding regions.

DATE: This rule change is effective 0001 UTC February 28, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Radio.

Report And Order

In the matter of Amendment of Part 97 of the Commission's Rules to Permit Telephony Operation in the 7075–7100 kHz Frequency Band in the Caribbean Insular Areas; PR Docket No. 85–104, RM–4872.

Adopted: January 16, 1986.
Released: January 22, 1986.

By the Commission.

Background

1. On November 6, 1984, David Novoa filed a Petition for Rule Making (RM–4872) in which he requested that telephony privileges be authorized for General, Advanced and Amateur Extra operators using the 7075–7100 kHz frequency band when their stations are in the Caribbean Insular Areas (the Commonwealth of Puerto Rico, Navassa Island and the United States Virgin Islands). After evaluating the comments filed in response to this petition, we released a *Notice of Proposed Rule Making*, 50 FR 15195, April 17, 1985, proposing to permit radio-telephony operation in the 7075–7100 kHz frequency band by General, Advanced or Amateur Extra control operators at stations transmitting from any location other than the forty-eight contiguous states.

2. Twenty-one comments and reply comments were filed.[1] Nineteen comments favored some version of the proposal; two opposed it. The American Radio Relay League (the ARRL) supported the proposal provided that it would be modified to restrict maritime mobile amateur telephony near the continental United States. The Puerto Rico Amateur Radio Club and the DX Club of Puerto Rico supported expansion of the proposed telephony subband to 7050–7100 kHz for Advanced and Amateur Extra operators and 7075–7100 kHz for General, Advanced and Amateur Extra operators. David Popkin and Philip E. Galasso supported extension of telephony privileges in the 7075–7100 kHz band without geographical limitation. Robert G. Wheaton supported the proposal, but in addition advocated extension of telephony privileges in the 7075–7100 kHz band to all areas that were within the claimed boundaries of the former Republic of Texas at the time of its annexation by the United States in 1845.[2]

Discussion

3. The reasons advanced in the *Notice* for proposing to expand telephony privileges in the 7075–7100 kHz segment of the 40 meter band in the Caribbean Insular Areas were: (1) Stations in the Caribbean which transmit on the 7100–7300 kHz band are experiencing interference from broadcast stations, particularly at night; (2) almost all emergency, weather and DX nets in the Caribbean transmit between 7000 and 7100 kHz in order to avoid broadcast interference; (3) FCC-licensed amateurs in the Commonwealth of Puerto Rico and the U.S. Virgin Islands are excluded from Caribbean emergency nets and drills because the frequency segment used for this purpose is 7075–7100 kHz; (4) U.S. jurisdictions in the Caribbean are the only locations in the Caribbean where telephony is completely prohibited between 7000 kHz and 7100 kHz; and (5) extension of telephony privileges in the 7075–7100 kHz frequency band to FCC-licensed amateur operators would promote international goodwill.

4. The DX Club of Puerto Rico concurred with this position in its comments, in which it concluded: ". . . there is a real need for a telephony segment in the 40 meter band below 7100 kHz, due to the interference suffered in this area; that operating conditions here are similar to those in the Pacific where identical privileges were granted; that international goodwill would be promoted; that we would be better prepared to provide emergency communications and that no detrimental interference to other users of the same frequencies would occur." In its comments, the Puerto Rico Amateur Radio Club, Inc., noted that ". . . almost all traffic, weather reports and emergency nets are organized below 7100 kHz to avoid the heavy interference received from broadcast stations from Regions 1 and 3."

5. John H. Parrott, Jr., and David L. Reasoner opposed extension of telephony privileges in the 7075–7100 kHz frequency band to FCC-licensed amateur operators in the Caribbean Insular Areas. Reasoner stated: "This band segment is used primarily for radioteletype transmissions by Amateurs in the forty-eight contiguous states . . . . [T]he effect of adoption of this NPRM would only be detrimental to these operations."

6. In his Petition for Rule Making David Novoa stated that the proposal would not cause detrimental interference to telegraphy operators in the continental United States because of the limited number of potential users. In its Comments, the ARRL concurred with this analysis. Additionally, Philip E. Galasso maintained in his comments that "[m]ost radiotelegraph stations already move below 7050 kHz at night in order to avoid the powerful Canadian (and other foreign) radiotelephone stations."

7. As of the end of October, 1985, our data base reflects 146 Amateur Extra, 356 Advanced and 489 General FCC-licensed amateur operators in the Caribbean Insular Areas. Presumably, not all of these amateur operators are active. Moreover, of those who are active, not all have the equipment necessary to transmit on or desire to use the 7075–7100 kHz frequency band. We conclude that the number of potential users of radiotelephony in the 7075–7100 kHz band in the Caribbean Insular Areas is sufficiently small that little additional interference to amateur operation in the continental United States should be expected.

8. The ARRL expressed concern that the rule as proposed would "significantly increase the radiotelephony use of the 7075–7100 kHz segment beyond that envisioned by the petitioner and beyond that necessary at

[1] Robert G. Wheaton filed a Motion to Accept Late Filed Pleading with his comment filed on June 19, 1985. Although this comment was filed two days after the comment period had expired, it was filed within the reply comment period. In the interest of a full public record and because it will best conduce to the dispatch of Commission business, we grant Wheaton's motion and accept his comments for filing. For the same reasons we also accept for filing all late-filed comments which were filed during the reply comment period.

[2] Wheaton advanced this proposal in a separate petition for rule making. Because of its close relationship to the matters in this docket, we will consider Wheaton's petition in the context of this proceeding.

present to accomplish the desired objective of allowing stations in Caribbean Insular Areas to effectively communicate with other Caribbean countries." Specifically, the ARRL contended that by allowing such telephony operation anywhere outside the continental United States we would also permit maritime mobile amateur operation far closer to the continental United States than either the current exceptions or Caribbean Insular Area operation would allow. We agree, and we will instead adopt a rule which defines the area of permissible operation in the Caribbean Insular Areas by specifying a northern boundary of a specific latitude. We note that the petitioner originally requested such a northern boundary at 17 degrees North latitude, but later amended his petition to request a boundary of 19 degrees North latitude. The ARRL recommended a boundary of 20 degrees North latitude. We are adopting the boundary of 20 degrees North latitude as the easiest to determine and comply with for amateur operators and because it permits the widest possible area of operation to the north of the Caribbean Insular Areas without causing harmful interference to telegraphy operations in the continental United States.

9. In our *Notice* we requested comment on Randall F. Sobol's recommendation that we expand the proposed telephony segment to 7050–7100 kHz. Sobol sought the addition of the 7050–7075 kHz frequency band to the proposed telephony segment because authorization was pending for a commercial shortwave station to operate above 7100 kHz. Seven commenters supported addition of the 7050–7075 kHz band for telephony use, including the DX Club of Puerto Rico and the Puerto Rico Amateur Radio Club., Inc. Reasons advanced for such an expansion included: (1) Pending shortwave station authorizations; (2) better Caribbean emergency preparedness; and (3) minimization of interference to continental U.S. telegraphy operations by spreading Caribbean 40 meter telephony over twice the amount of spectrum.

10. The ARRL opposed addition of the 7050–7075 kHz band for telephony use, on the basis that: "[f]urther expansion would disrupt existing telegraphy and RTTY operation to a greater extent than necessary to accomplish the goal of the proposal, without providing any significant marginal benefit." Robert A. Scupp commented that such an expansion would be contrary to our professed intention of limiting this proceeding's impact upon telegraphy operation in the continental U.S. Since we anticipated that the number of likely Caribbean telephony users even in the proposed 25 kHz frequency segment would not cause harmful interference to telegraphy operations in the continental U.S., we see no advantage to be derived from spreading them across twice the amount of spectrum. Rather, we conclude that the increased likelihood of interference to additional telegraphy operations militates in favor of not expanding the proposed telephony band.

11. In the *Notice* we also requested comment on whether expanded 40 meter telephony privileges for the Caribbean Insular Areas should be limited to Advanced and Amateur Extra operators. None of the comments in response to the *Notice* supported completely excluding General operators from using these new telephony privileges. However, in conjunction with their support of a 7050–7100 kHz telephony band, seven comments suggested limiting the 7050–7075 kHz band to Advanced and Amateur Extra operators while permitting General, Advanced and Amateur Extra operators in the 7075–7100 kHz band. The commenters supporting such subbands argued that they would be consistent with the concept of incentive licensing.

12. The ARRL commented that excluding General operators from any Caribbean telephony privileges would be inconsistent with the object of this proceeding: to promote network operation and regional communication in the Caribbean Insular Areas. Sobol maintained that there is no reason whatever to exclude General class operators from any regional weather nets, and that reservation of any telephony subband for exclusively Advanced or Amateur Extra operator use would be elitist. The 7075–7100 kHz frequency band is currently available to General, Advanced and Amateur Extra operators. As we have previously noted the number of General operators licensed by the FCC in the Caribbean Insular Areas is roughly equal to the number of Advanced and Amateur Extra operators combined. The primary objective of this proceeding is to facilitate inter-nation and regional communication in the Caribbean. In light of this, we believe that all FCC-licensed amateur operators authorized to operate in the 7075–7100 kHz band in the Caribbean should also be authorized to use all permissible emissions, including telephony emissions, in that band. Therefore, we are adopting rules which include General class telephony privileges for the 7075–7100 kHz frequency band in the Caribbean Insular Areas.

13. Two commenters recommended that there be no geographical limitation upon that portion of the 40 meter band in which we authorize telephony. Popkin stated that the interference concerns raised by this docket are equally applicable throughout most U.S. jurisdictions, and that authorization of 40 meter telephony privileges throughout the United States would facilitate communications with geographically proximate nations. Galasso stated that the United States is the only country in the world which does not allow telephony in this segment. Wheaton, in support of his proposal to extend these telephony privileges to those portions of the United States formerly within the Republic of Texas, cited our common border with Mexico and the strong Hispanic ties of that region.

14. The ARRL concurred that "the argument that amateurs in Caribbean Insular Areas should be given relief from the broadcast and other interference above 7100 kHz is equally applicable to the forty-eight contiguous states." However, the ARRL stated that there is good reason to give the relief proposed in the *Notice* which is unique to the Caribbean: (1) The number of potential users of radiotelephony at 7075–7100 kHz in the Caribbean Insular Areas is sufficiently small that little interference to telegraphy operation in the contiguous United States would be expected; and (2) it permits FCC-licensed Caribbean amateurs to communicate with their geographically proximate counterparts in other locations in the Caribbean on weather and emergency networks on the appropriate network frequencies. These arguments are not equally applicable to the mainland United States. The goal of this proceeding, to facilitate Caribbean Insular Area regional communication, can be achieved without the further-reaching proposals of Sobol, Popkin or Wheaton. We therefore decline to adopt rules extending 40 meter telephony privileges to FCC-licensed amateur operators transmitting from the mainland United States. In his comments in this matter Galasso also proposed to eliminate all amateur emission subbands. This recommendation goes far beyond the scope of this proceeding and we will not consider it.

15. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605) we certified in the *Notice of Proposed Rule Making, supra*, in this proceeding that these rules would not, if promulgated, have a significant

economic impact on a substantial number of small entities, because these entities may not use the Amateur service for commercial radiocommunication (see 47 CFR 97.3(b)). The Chief Counsel for Advocacy of the Small Business Administration has been so notified.

16. The new rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Conclusion

17. We are amending the Part 97 Amateur Radio Service Rules consistent with the previous discussion in order to permit telephony operation by General, Advanced and Amateur Extra operators in the 7075–7110 kHz frequency band in the Caribbean Insular Areas. It appears that amateur stations which transmit on 40 meters are experiencing increasing interference from broadcast stations in ITU Regions 1 and 3. However, this interference is not unique to the Caribbean and would not alone warrant a rule change. We take this action because we believe it will significantly improve international communication in the Caribbean without creating additional interference to amateur operation in the continental United States.

18. Accordingly, it is ordered, that effective 0001 UTC February 28, 1986, Part 97 of the Commission's Rules (47 CFR Part 97) is amended as shown in the Appendix attached hereto. The authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

19. It is further ordered, that this proceeding is terminated.

20. For further information concerning this document, contact John J. Borkowski, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303.

§ 97.61 [Amended]

2. The phrase "or south of 20 degrees North latitute" is added to the end of paragraph (b)(1) of § 97.61.

[FR Doc. 86–1984 Filed 1–29–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–196; Amdt. Nos. 172–99 and 173–190]

Packaging and Placarding Requirements for Liquids Toxic by Inhalation

Correction

In FR Doc. 85–23977 beginning on page 41098 in the issue of Tuesday, October 8, 1985, make the following correction: On page 41096, in the second column, in § 173.3a(b)(1), in the fifth line, "173.254" should read "173.245".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276–4176]

Fishery Conservation and Management; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Notice of initial specifications.

SUMMARY: 50 CFR 611.20(c) requires that the specifications of optimum yield (OY), initial estimates of U.S harvests, and total allowable levels of foreign fishing (TALFF) be published at the beginning of the relevant fishing year. Therefore, NOAA issues this notice presenting the numbers, as of January 1, 1986, for 1986 for all foreign fisheries.

EFFECTIVE DATE: January 1, 1986. Comments will be accepted until March 3, 1986.

ADDRESSES: Send comments on interim specifications to the appropriate NMFS Regional Director listed below.

For current apportionments at any time during the year contact the Regional Director.

Mr. Richard Schaefer, Acting Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617–281–3600

Mr. Jack T. Brawner, Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813–893–3141

Mr. Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, 907–586–7221

Mr. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115, 206–526–6150

Mr. E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213–548–2575.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Haynes (Fisheries Management Specialist), 202–634–7432.

SUPPLEMENTARY INFORMATION: This notice announces initial 1986 specifications for all fisheries having a foreign fishing component.

1. Northwest Atlantic Ocean Fisheries (Northeast Region)

Foreign fishing regulations for Atlantic hake, river hearring and other finfish, and mackerel, squid, and butterfish appear at §§ 611.50 and 611.51.

The hake and river herring fisheries are managed under preliminary management plans in which the initial annual specifications remain constant from year to year. Therefore, the numbers shown for these species in the table below are final for 1986.

The mackerel, squid, and butterfish fisheries are managed under one combined fishery management plan (FMP). Procedures for determining OY for these species each year are described in § 655.20. The preliminary initial annual amounts are scheduled to be published by February 1 for the fishing year beginning April 1, 1986. Therefore, the numbers shown in the table below are the current specifications for the fourth quarter of the 1985–86 fishing year ending March 31, 1986. Comments are invited regarding specifications for the 1986–87 fishing year.

2. Atlantic and Gulf Fisheries (Southeast Region)

Foreign fishing regulations for the Atlantic shark and royal red shrimp fisheries appear at §§ 611.61 and 611.62.

The shark fishery is managed under a multi-year preliminary management plan in which the specifications remain constant from year to year. Therefore, the numbers shown for sharks in the table below are final for 1986.

The royal red shrimp fishery is managed under the FMP for the Shrimp Fishery of the Gulf of Mexico. The TALFF established in the FMP and its implementing regulations (46 FR 27489, May 20, 1981) for this species has continued without change from year to year. Therefore, the numbers shown for royal red shrimp in the table below may be considered final for 1986.

3. Alaska Fisheries (Alaska Region)

Foreign fishing regulations for groundfish fisheries off Alaska appear at §§ 611.72 and 611.75.

The snail fishery in the Gulf of Alaska is managed under a multi-year preliminary management plan in which the specifications remain constant from year to year. Therefore, the numbers shown for snails in the table below are final for 1986.

A. Bering Sea and Aleutian Islands Groundfish Fisheries.

Specifications published for these fisheries (50 FR 956, January 9, 1986) and repeated in the table below are interim pending consideration of public comments on initial apportionment of the reserve invited in the interim notice and on these specifications for 30 days. Final specifications, expected to be essentially the same as these interim amounts, will be published after the end of the comment period.

B. Gulf of Alaska Groundfish Fisheries.

Specifications published for these fisheries (51 FR 956, January 9, 1986) and repeated in the table below are interim pending amendment of the FMP to revise OYs for several species based on more recent scientific information. Public comments on these specifications and possible revisions are invited for 30 days. Final specifications for 1986 will be published when the amendment is implemented.

4. Northeast Pacific Ocean Fisheries (Northwest Region)

Foreign fishing regulations for these fisheries appear at § 611.70. Final specifications for 1986 were published January 10, 1986 (51 FR 1255), and are repeated in the table below.

5. Western Pacific Ocean Fisheries (Southwest Region)

Foreign fishing regulations for these fisheries appear at §§ 611.80 and 611.81. These fisheries are managed under multi-year preliminary management plans in which the specifications remain constant from year to year. Therefore, the numbers shown for the various species in the table below are final for 1986.

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
1. NORTHEAST REGION								
Northwest Atlantic Ocean Fisheries (§§ 611.50 and 611.51)								
A. Hake fishery:								
(Source: 50 FR 468, January 4, 1985):								
Hake, silver	104	NW Atlantic I–IV [2]	30,000	20,600	5,600		0	9,400
		NW Atlantic V	13,000	9,000	2,000		0	4,000
Hake, red	105	NW Atlantic I–IV	16,000	13,000	13,000	0	0	3,000
		NW Atlantic V	6,000	500	500	0	3,000	2,500
B. Trawl fishery:								
(Source: 50 FR 468, January 4, 1985):								
Herring, river	309		8,000	7,800	7,900	0	0	200
Other finfish	499		247,000	200,200	180,000	20,200	0	46,800
C. Mackerel fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Atlantic mackerel	204		[3] 225,300	[3] 123,200	13,000	100,000	51,050	51,070
D. Squid fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Squid, *Loligo*	502		[3] 44,000	22,500	20,500	20,000	0	7,725
Squid, *Illex*	504		[3] 30,000	16,000	11,500	4,500	0	3,900
E. Butterfish fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Butterfish [3]	212		[3] 16,000	11,000	11,000	(4)	0	[3] 1,145
2. SOUTHEAST REGION								
Atlantic and Gulf Fisheries (§§ 611.61 and 611.62)								
A. Atlantic billfish and sharks fishery:								
(Source: 48 FR 3371, January 25, 1983):								
Sharks	469		6,150	5,000			0	1,150
B. Shrimp fishery of the Gulf of Mexico:								
(Source: 46 FR 27489, May 20, 1981):								
Royal red shrimp	630		177.8	111.6			0	66.2
3. ALASKA REGION								
Alaska Fisheries (§§ 611.92 and 611.93)								
A. Bering Sea and Aleutian Islands Groundfish Fishery								
(Source: 51 FR 956; January 9, 1986):								
Pollock	701	Bering Sea [2]	[1] 1,200,000	831,775	141,775	690,000	(4)	188,245
		Aleutians [2]	[1] 100,000	28,843	18,039	10,804	(4)	56,157
Pacific ocean perch [4]	780	Bering Sea	[1] 825	770	576	194	(4)	55
		Aleutians	[1] 6,800	6,800	6,340	460	(4)	50
Other rockfish	849	Bering Sea	[1] 825	791	648	143	(4)	50
		Aleutians	[1] 5,800	5,800	5,791	9	(4)	50
Sablefish	703	Bering Sea	[1] 2,250	2,072	1,826	246	(4)	95
		Aleutians	[1] 4,249	4,199	4,159	40	(4)	50
Pacific cod	702		[1] 229,000	184,224	133,394	50,830	(4)	[3] 32,406
Yellowfin sole	720		[1] 209,500	128,330	1,030	127,300	(4)	49,745
Greenland turbot	721		[1] 33,000	10,414	5,414	5,000	(4)	17,636
Arrowtooth flounder	118		[1] 20,000	3,472	1,805	1,667	(4)	13,528
Other flatfish	129		[1] 124,200	93,742	4,192	89,550	(4)	11,828

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS—Continued

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
Atka mackerel	207		[1] 30,800	30,800	10	30,790	[9]	50
Squid	509		[1] 5,000	60	10	50	[9]	4,210
Other species [5]	499		[1] 27,800	7,110	110	7,000	[9]	16,520
B. Gulf of Alaska Groundfish fishery (Source: 51 FR 956, January 9, 1986):								
Pollock	701	Western/Central [6]	305,000	289,000	204,000	85,000	16,000	0
		Eastern [6]	16,600	13,280	13,280	0	3,320	0
Pacific cod	702	Western	16,560	13,248	10,727	2,521	3,320	0
		Central	33,540	26,832	23,873	2,959	6,708	0
		Eastern	9,900	7,920	7,920	0	1,980	0
Flounders	129	Western	10,400	8,320	7,284	1,036	2,080	0
		Central	14,700	11,770	10,686	1,084	2,930	0
		Eastern	8,400	6,720	6,720	0	1,680	0
Pacific ocean perch [4]	780	Western	1,302	1,302	1,302	0	0	0
		Central	3,906	3,906	3,906	0	0	0
		Eastern	875	875	875	0	0	0
Other rockfish [7]	849	Gulf-wide	4,400	4,400	4,400	0	0	0
		Central S.E. Outside	600	600	600	0	0	0
Sablefish [8]	703	Western	1,670	1,670	1,670	0	0	0
		Central	3,060	3,060	3,060	0	0	0
		West Yakutat [6]	1,680	1,680	1,680	0	0	0
		East Yakutat [6]	850 to 1,135	850 to 1,135	850 to 1,135	0	0	0
		Southeast Outside [6]	470 to 1,435	470 to 1,435	470 to 1,435	0	0	0
Atka mackerel	207	Western	4,678	3,752	10	3,742	926	0
		Central	500	400	370	30	100	0
		Eastern	100	80	80	0	20	0
Thornyhead rockfish	749	Gulf-wide	3,750	3,000	1,500	1,500	750	0
Squid	509	Gulf-wide	5,000	4,000	2,000	2,000	1,000	0
Other species [5]	499	Gulf-wide	22,460	17,968	9,074	8,894	4,492	0
C. Snail fishery: (Source: 46 FR 1738, January 7, 1981):								
Snails (meats)	673		3,000	0	0	0	0	3,000
4. NORTHWEST REGION								
Northeast Pacific Ocean Fisheries (§ 611.70)								
Pacific Coast Groundfish Fishery (Source: 51 FR 1255; January 10, 1986):								
Pacific whiting	704		227,500	135,000	15,000	[1] 120,000	45,500	47,000
Sablefish	703		[11] 13,600	13,600	13,600	[10]	0	[10]
Pacific ocean perch (POP)	780		[12] 1,550	1,550	1,550	[10]	0	[10]
Shortbelly rockfish	850		10,000	6,000	1,000	5,000	2,000	2,000
Widow rockfish			10,200	10,200	10,200	0	0	0
Jack mackerel	208		12,000	0	0	0	0	[10] 0
Other species	499		[13]					
5. SOUTHWEST REGION								
Western Pacific Ocean Fisheries (§§ 611.80 and 611.81)								
A. Seamount Groundfish Fishery: (Source: 46 FR 7386, January 23, 1981):								
Armorheads	200							
Alfonsins	201							
Other groundfish	499		[14] 2,000	0	0	0	0	2,000
B. Pacific Billfish and Sharks Fishery: (Source: 46 FR 1738, January 7, 1981):								
Swordfish	264	West Coast	318.4	[15] 350.2			0	0
		Hawaii & Midway	93.6	5.9			8.8	78.9
		Guam & N. Marianas	4.1	0.2			0.4	3.5
		American Samoa	2.4	0			0	2.4
		U.S. Possessions	28.1	0			0	28.1
Blue marlin	260	West Coast						
		Hawaii & Midway	612.0	603.4			8.6	0
		Guam & N. Marianas	26.9	3.0			23.9	0
		American Samoa	37.2	2.3			0	34.9
		U.S. Possessions	76.3	0			0	76.3
Black marlin	253	West Coast						
		Hawaii & Midway	97.7	[15] 104.7			0	0
		Guam & N. Marianas	0.6	0			0.1	0.5
		American Samoa	5.3	0			0	5.3
		U.S. Possessions	6.2	0			0	6.2
Striped marlin	261	West Coast	43.2	[15] 47.5			0	0
		Hawaii & Midway	[6] 223.2	67.9			15.5	139.8
		Guam & N. Marianas	5.0	0.3			0.5	4.2
		American Samoa	7.8	0			0	7.8
		U.S. Possessions	46.6	0			0	46.6
Sailfish	252	West Coast						
Spearfish	262	Hawaii & Midway	42.7	23.4			1.9	17.4
		Guam & N. Marianas	4.8	0.2			0.5	4.1
		American Samoa	3.5	1.3			0	2.2
		U.S. Possessions	14.3	0			0	14.3
Sharks 263, 265, 266, 267, 469		West Coast	27.6	[15] 30.4			0	0
		Hawaii & Midway	1,111.6	0			111.1	1,000.5
		Guam & N. Marianas	31.9	0			0	31.9
		American Samoa	101.6	0			0	101.6
		U.S. Possessions	651.4	0			0	651.4
Wahoo	255	West Coast						
		Hawaii & Midway	288.9	[15] 317.8				0
		Guam & N. Marianas	25.1	27.6				0

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS—Continued

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
Mahimahi	237	American Samoa	4.8	2.8				2.0
		U.S. Possessions						
		West Coast						
		Hawaii & Midway	105.0	[15] 115.5			0	0
		Guam & N. Marianas	18.9	[15] 20.8			0	0
		American Samoa	6.4	4.4			0	20
		U.S. Possessions						

Footnotes:

[1] *OY* means optimum yield (in the Atlantic mackerel, squid, and butterfish fishery, the OY shown is the maximum allowed by the FMP); *TAC* means total allowable catch determined annually within an established range of a multi-year, multi-species OY for the Bering Sea and Aleutian Islands area groundfish complex.

[2] *Northwest Atlantic* means foreign fishing areas I to IV or V in § 611.9, Appendix II, figure I; *Bering Sea* means fishing areas I, II, and III, and *Aleutian Islands area* means fishing area IV in § 611.9, figure 2.

[3] For the Atlantic mackerel fishery, DAH includes a projected recreational catch of 10,200 mt. For the butterfish fishery, JVP is conditional and TALFF is determined by a fixed percentage of the amount of other species allocated to foreign fishing vessels under § 655.21(b)(3)(iii).

[4] In Alaskan fisheries, the category "Pacific ocean perch" includes *Sebastes alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish). In the Pacific coast groundfish fishery, POP is *S. alutus*.

[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The OY for Gulf of Alaska "other species" equals 5% of the OYs for target species.

[6] See Figure 1 of § 611.92(a) for description of regulatory areas and districts.

[7] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch", as defined in footnote 5 above, and *Sebastolobus* (thornyhead rockfish).

[8] Excludes values for the Southeast Inside District, which is not governed by these regulations.

[9] 15% of the TAC, or 300,000 metric tons, is apportioned to the initial pooled reserve and the remaining TAC is apportioned to DAP, JVP, and TALFF. The reserve may be apportioned to DAP, JVP, or TALFF as needed. TALFFs of Pacific cod, Pacific ocean perch, other rockfish contain amounts from the initial pooled reserve.

[10] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) follow: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding POP 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding POP, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions of the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[11] Of this 13,600 mt, 2,500 mt is for part of the Monterey subarea. See § 633.21(a)(2).

[12] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. POP from other subareas are included in the OY for "other species". See § 663.21(a)(3).

[13] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 633. See § 663.2 for species listing.

[14] OY includes all seamount groundfish resources.

[15] Estimated DAH exceeds OY for this fishery.

Other Matters

This notice is issued under 50 CFR Part 611 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

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

Dated: January 27, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-2061 Filed 1-29-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Merger of Credit Unions; Proposed revision

AGENCY: National Credit Union Adminstration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA requests comments on its proposal to revise Part 708, Mergers of Credit Unions, of the National Credit Union Administration's Rules and Regulations. Basically, the proposed revisions would (1) provide discussion on the one percent NCUSIF deposit, (2) shorten from 120 days to 60 days the length of time permitted between the date of approval of the merger by NCUA and the time it must be presented for membership vote by the merging credit union, (3) establish a time frame for notifying NCUA of the results of a membership vote, (4) establish a time frame for notifying NCUA of the completion of the merger, and (5) eliminate the requirement that financial statements, a certification of completion from the merging credit union, and the merging credit union's charter and insurance certificate be sent to NCUA upon completion of the merger. The proposed revision will also clarify certain ambigious words and statements and make grammatical and technical changes. Comments are requested on these matters as well as on any other issues of concern to the public with respect to mergers. This notice of proposed rulemaking will be followed by a final rule.

DATE: Comments must be received on or before March 30, 1986.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 357–1100.

FOR FURTHER INFORMATION CONTACT: Harvey J. Baine III, Regional Director, Region II (Capital), at Suite 700, 1776 G Street, NW., Washington, D.C. 20006, or telephone: (202) 682–1900.

SUPPLEMENTARY INFORMATION: Part 708 of the National Credit Union Administration Rules and Regulations sets forth procedural requirements for a credit union to merge with another credit union. The proposed revision is the result of NCUA's ongoing review of regulations. The regulation was reviewed to determine whether it could be further simplified or whether further mandatory requirements were necessary. The number of mergers has increased greatly in recent years. This trend reflects more aggressive efforts by agency personnel to arrange mergers for troubled credit unions and broadened field-of-membership policies. Prior to 1982, section 109 of the Federal Credit Union Act (12 U.S.C. 1759), which addresses Federal Credit Union membership, was narrowly interpreted by NCUA. In April 1982, NCUA deregulated its field-of-membership policy. Because of these more flexible membership policies, a credit union seeking a merger partner can now merge with a credit union nearby. Our experience indicates that most mergers involve small credit unions merging with a larger nearby credit union for the purpose of expanding services to the membership of the merging credit union. Our experience also indicates that most mergers are consummated by the credit unions involved within two months of NCUA approval. Due to the lack of time frames or unnecessarily long time frames contained in the existing regulations, it frequently takes extensive followup to obtain the necessary documentation to finalize the merger and eventually cancel the merging credit union's charter and/or insurance certificate. We believe that the changes will help to improve this situation. Also contributing to this problem is the requirement that the continuing credit union submit various documents to NCUA upon completion of the merger. This puts an unnecessary burden on both the credit union and NCUA personnel who must follow up to obtain the documentation. We propose that the credit union simply certify the completion of the merger to NCUA.

The following substantive changes are made in the proposed regulation: (1) Language in § 708.1(a)(3) of the current regulation concerning credit unions in the Panama Canal Zone and former Department of Defense credit unions has been deleted; (2) language concerning capitalization assessment and refund of the NCUSIF insurance premium is added to § 708.3 of the regulation. This addition is neccessary due to the recent capitalization of the share insurance fund; (3) a sentence is added to § 708.4(a)(10) of the regulation to clarify that charter amendments included in a proposed merger plan will usually pertain to the name of the credit union and its field of membership; (4) shorten from 120 days to 60 days the length of time permitted between date of approval of the merger NCUA and the time it must be presented for membership vote by the merging credit union in § 708.7(a)(1) of the regulation; (5) establish a time frame of 10 days for the merging Federal credit union to certify to NCUA the results of the membership vote in § 708.8 of the regulation; (6) eliminate the requirements that financial statements, a certification of completion from the merging credit union and the merging credit union's charter and insurance certificate be sent to NCUA upon completion of the merger in § 708.9 of the regulation. In addition to these substantive changes, several technical and grammatical corrections are made in the proposed regulation.

Regulatory Procedures

The NCUA Board hereby certifies that any proposed change to the regulation, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed changes are merely procedural changes. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule would eliminate a paperwork requirement currently in place thereby reducing the paperwork burden of federally-insured credit unions.

List of Subjects in 12 CFR Part 708

Credit Unions, Mergers of Credit Unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration on the 16th day of January, 1986.

Rosemary Brady,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

It is proposed that Part 708 be revised to read as follows:

PART 708—MERGERS OF CREDIT UNIONS

Authority. 12 U.S.C. 1757, 1766 and 1789.

§ 708.0 Scope.

(a) This Part prescribes the procedures that enable one or more credit unions to merge with a single continuing credit union where at least one of the merging credit unions or the continuing credit union is a Federal credit union or a federally-insured state credit union.

(b) Nothing in this Part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to the provision of section 205(h) of the Act.

§ 708.1 Definitions.

(a) As used herein:

(1) The continuing credit union is that credit union which will continue in operation after the merger.

(2) The merging credit union is that credit union which will cease to exist as an operating credit union at the time of the merger.

(3) State credit union means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, state means the appropriate regulatory or supervisory authority for any such credit union.

§ 708.2 When permissible.

(a) When the requirements enumerated herein have been met, merger may be effected if:

(1) There has been compliance with National Credit Union Administration (NCUA) chartering policies (where the continuing credit union is a Federal credit union); or

(2) Permitted by state law or authorized by the state supervisory authority (where the continuing or merging credit union is a state credit union).

(b) In any case where the continuing credit union is federally-insured, and the merging credit union is not federally-insured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

§ 708.3 Special provisions for National Credit Union share insurance.

(a) Where the continuing credit union is not federally-insured, but the share accounts of the merging credit union are so insured, such insurance ceases as of the effective date of the merger. Members of the merging credit union shall be notified accordingly prior to any required voting activity to approve the merger.

(b) When a credit union's insurance is terminated in accordance with paragraph (a) of this section, the continuing credit union is entitled to a refund of the NCUSIF deposit required by § 741.5 (12 CFR 741.5) and to a refund of the unused portion of the NCUSIF share insurance premium (if any).

(c) Where the merging credit union is federally-insured and the continuing credit union is not so insured, but desires to be insured as of the date of the merger, an application shall be submitted to NCUA when the merging credit union requests its approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger.

(d) Where the federally-insured credit union will be the continuing one, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a non federally-insured credit union with a federally-insured credit union.

§ 708.4 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance of member accounts;

(9) Provisions for insuring that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

§ 708.5 Submittal of merger proposal to Administration.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to NCUA:

(1) The merger plan, as described in this part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreements for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured).

§ 708.6 Approval of merger proposal by NCUA.

(a) If NCUA finds that the merger proposal complies with this and other parts of these regulations, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. Provided, however, that in the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance

Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of § 708.7.

(b) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

§ 708.7 Approval of the merger proposal by members.

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance of member accounts;

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The merger proposal of a merging Federal credit union must be approved by affirmative vote of a majority of the members of the credit union who vote on the proposal.

§ 708.8 Certificate of vote on merger proposal.

The board of directors of the merging Federal credit union shall certify the results of the membership vote to NCUA within 10 days after the vote is taken.

§ 708.9 Completion of merger.

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to NCUA within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of a certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable), and the insurance certificate of any merging federally-insured credit union will be cancelled.

[FR Doc. 86-1906 Filed 1-29-86; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-1]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of disposition of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before March 31, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-240), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 24, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24784	Icarus Executive Services	Description of the petition: Petitioner proposes amendments that would require each certificate holder to periodically undergo a comprehensive inspection and evaluation to demonstrate continuing full compliance with Part 135 regulatory requirements. Petitioner further proposes that the periodic inspection may be completed by persons or organizations other than the FAA unless, in a particular instance, such is found not to be in the public interest. Additionally, the cost of the inspections by persons other than the FAA is to be borne by the certificate holder. Regulations Affected: 14 CFR 135.73. Petitioner's reason for rule: The FAA would enhance the entire program of air carrier inspection and evaluation while reducing the cost to the government of the FAA inspection program.
24827	Pan American World Airways	Description of the petition: Petitioner requests amendments to clarify the meaning of the words "7 consecutive days," insofar as it determines the timeframe for the required 24 consecutive hours of rest for international flying. Petitioner also requests a stay of enforcement of the FAA interpretation issued on December 6, 1977, for § 121.471(d) and 121.483(b). Petitioner interprets the phrase "7 consecutive days" to mean "a 168-hour period which begins at the commencement of duty immediately following a 24-consecutive-hour duty free period.

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
24520	Aviation Training Academy	Regulations affected: 14 CFR 121.481(d) & 121.483(b). Description of the petition: To allow the use of aviation red or aviation white or a combination thereof for the approved anticollision light(s) required for nighttime operation. Regulations affected: 14 CFR 27.1401(d). Petitioner's reason for rule: Petitioner contends that by allowing the use of aviation white or a combination of aviation white and aviation red that safety will be enhanced.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
18591	Transamerica Airlines, Inc. & World Airways.	Description and disposition of the rule requested: The changes would allow scheduled air carriers to use the procedures that are now applicable to supplemental air carriers. These changes would provide the petitioner's permanent relief from those sections, as was provided by three exemptions (Nos. 2680, 2696, and 2696A) held by the petitioner's at the time of the petition. The petition also proposes to make changes in other related section, replace them with new proposed sections, or to make them conform in terminology with the major proposed changes. Regulations affected: 14 CFR Part 121. Denied 1/3/86.
23273	Air Transport Association of America.	Description and disposition of the rule requested: To eliminate the practical test requirements for issuing type ratings to pilots. The petitioner suggests three alternative regulatory proposals. Pilots who already hold an Airline Transport Pilot (ATP) certificate and a jet transport type rating who are employed by a Part 121 operator and have successfully completed an approved aircraft qualification course and a flight check administered by the operator could: 1) be issued a type rating by the FAA after a flight check administered by the operator; 2) serve a pilot in command (PIC) for that operator without additional Federal Aviation Administration (FAA) certification, if the pilots holds at least one type rating in the same airplane group; or 3) be issued a type rating by the FAA after being observed by an FAA inspector on at least one leg of the pilot's initial operating experience (IOE). Regulations affected: 14 CFR 61.31(a), 61.157, and 121.437(a). Denied 1/13/86.

[FR Doc. 86-2013 Filed 1-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-50]

Proposed Alteration of VOR Federal Airway V-532—KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-532 by extending that airway from Salina, KS, direct to Lincoln, NE. Pilots routinely request direct routing between Salina and Lincoln. This action would expedite traffic, aid flight planning, and save fuel by eliminating the current dogleg via Pawnee City, NE.

DATES: Comments must be received on or before March 17, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Central Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-50, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

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, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-50." 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-532 by extending that airway from Salina, KS, direct to Lincoln, NE. The Minneapolis Air Route Traffic Control Center has received numerous requests from pilots for direct routing from Lincoln direct to Salina. In order to assist users, we propose to designate an

airway in that area where radar vectors are normally applied. This action would save fuel, reduce controller workload and aid flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–532 [Amended]

By removing the words "to Salina." and by substituting the words "Salina; to Lincoln, NE."

Issued in Washington, DC, on January 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–2011 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 85N–0502]

Canned Fruit Cocktail; Advance Notice of Proposed Rulemaking on the Possible Amendment of the U.S. Standards of Identity, Quality, and Fill of Container; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its advance notice of proposed rulemaking on the possible amendment of the U.S. standards for canned fruit cocktail. This action is based on a request for an extension of the comment period.

DATE: Comments by March 31, 1986.

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

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 29, 1985 (50 FR 49066), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Canned Fruit Cocktail (Codex Standard 78–1981) (Codex Standard) and to comment on the desirability of, and need for, amendment of the U.S. standards of identity, quality and fill of container for canned fruit cocktail. FDA requested comments by January 28, 1986.

The National Food Processors Association (NFPA), on behalf of its member companies, submitted a request for a 60-day extension of the comment period. The purpose of the request is to allow the industry adequate time to properly evaluate the Codex standard and determine a proper course of action.

FDA concludes that NFPA has provided adequate justification for its request. Therefore, FDA is extending the comment period for 60 days to March 31, 1986.

Interested persons may, on or before March 31, 1986, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above betwen 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–1978 Filed 1–27–86; 10:29 am]

BILLING CODE 4160–01–M

21 CFR Part 163

[Docket No. 85N–0501]

Chocolate Products; Possible Amendment of the U.S. Standards of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its advance notice of proposed rulemaking on the possible amendment of the U.S. standard for chocolate products. This action is based on a request for an extension of the comment period.

DATES: Comments by April 30, 1986.

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

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0112.

SUPPLEMENTARY INFORMATION: In the Federal Register of Decemberr 2, 1985 (50 FR 49398), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Chocolate (Codex Standard 87–1981) (Codex standard) and to comment on the desirability of, and need for, amendment of the U.S. standards of identity for chocolate products to achieve consistency with the Codex standard. FDA requested comments by January 31, 1986.

The Chocolate Manufacturers Association of the United States of America (CMA) has requested a 90-day extension of the comment period. The purpose of the request is to allow the industry adequate time to properly review the Codex Standard and determine a proper course of action.

FDA concludes that CMA has provided adequate justification for its request. Therefore, FDA is extending the comment period for 90 days to April 30, 1986.

Interested persons may, on or before April 30, 1986, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-1992 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-95-84]

Limitations on Alternative Benefits; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to certain restrictions on an employee's right to receive alternative forms of benefit under qualified plans. They reflect changes made by the Retirement Equity Act of 1984 (REA). The regulations will generally affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and they provide plan sponsors with guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed March 31, 1986. These regulations are proposed to be effective January 30, 1986, except as otherwise specified in these regulations.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-95-84) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3903 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401 and 411 of the Internal Revenue Code of 1954 (Code). Generally, the proposed regulations under section 401(a)(4) clarify existing law. The proposed regulations under sections 401 and 411 conform the regulations to section 301 of the Retirement Equity Act of 1984 (REA). The regulations are proposed to be issued under the authority of Code section 411(d)(6) and 7805 (98 Stat. 1450, 68A Stat. 917; 26 U.S.C. 411(d)(6), 7805).

Nondiscrimination Requirements

Section 401(a)(4) of the Code provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders or highly compensated (the prohibited group).

Rev. Rul. 85-59, 1985-19 I.R.B. 4, considered whether plans providing actuarially equivalent forms of benefit that are subject to certain conditions (including a requirement that the trustee approve a participant's request to receive a single sum distribution) would satisfy section 401(a)(4). Rev. Rul. 85-59 held that these restrictions on a plan participant's ability to receive a single sum distribution may be discriminatory under section 401(a)(4).

The proposed regulations generally restate the position taken in Rev. Rul. 85-59. However, they provide that this position will be applied only prospectively with respect to existing conditional alternative forms of benefit. Thus, with respect to such benefits, Rev. Rul. 85-59 will not be applied until these regulations are effective.

REA Requirements

Rev. Rul. 79-90, 1979-1 C.B. 155, held that a defined benefit pension plan violates the definitely determinable benefits requirement of section 401 and Treas. Reg. § 1.401-1(b)(1)(i) unless, whenever the amount of any optional or early retirement benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a manner that precludes employer discretion. For this purpose employer discretion includes discretion of the employer, plan administrator, fiduciary, actuary or other person.

Rev. Rul. 81-12, 1981-1 C.B. 228, considered whether plan amendments that changed actuarial factors directly or indirectly affected the computation of a participant's accrued benefit in a manner that violated section 411(d)(6) of the Code. Rev. Rul. 81-12 held that a change in acturarial factors that affects the calculation of a participant's optional or early retirement benefit is subject to the protective language of section 411(d)(6). Thus, a change in actuarial factors that could result in the decrease of a participant's accrued benefit, including an optional or early retirement benefit, would result in plan disqualification.

Section 401(a)(25) of the Code, added by section 301 of REA, affirms the Service's application (in Rev. Ruls. 79-90 and 81-12) of the section 401(a) definitely determinable benefit requirement. Section 401(a)(25) provides that a defined benefit plan shall not be treated as providing definitely determinable benefits unless any actuarial assumptions used to determine the amount of any benefit are specified in the plan in a way that precludes employer discretion.

Section 411(d)(6) of the Code, as amended by section 301 of REA, provides that, in general, a plan will not satisfy the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 411(d)(6) also provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or, under certain conditions, a retirement-type subsidy or an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as impermissibly reducing accrued benefits. An exception is provided to the extent that such amendments are permitted under regulations promulgated by the Secretary under the grant of regulatory authority contained in section 411(d)(6).

The proposed regulations provide that the definitely determinable benefit requirement precludes a pension plan provision that allows employer consent or discretion with respect to the availability or payment of any alternative forms of benefit. The proposed regulations further provide

that any qualified plan, including any profit-sharing or stock bonus plan that is not subject to the definitely determinable benefit requirement, may not contain these types of employer consent or discretion provisions. These provisions would effectively enable an employer to eliminate or reduce the availability of alternative forms of benefit without regard to the protection given to plan participants under section 411(d)(6) that such accrued benefits not be eliminated or reduced. However, the proposed regulations clarify that a qualified plan may condition the availability of an alternative form of benefit on satisfaction of objective and clearly ascertainable criteria specifically set forth in the plan, including, for example, the insurability of the employee or the existence of extreme financial need. The prohibition on employer consent or discretion is not violated where the employer reasonably and consistently applies such objective and clearly ascertainable criteria.

Title I of ERISA

The proposed regulations under section 411 are also applicable to identical provisions of Title I. Thus, these requirements also apply to employee plans subject to Title I of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 [43 FR 47713], the Secretary of the Treasury has jurisdiction over the subject matter addressed in these regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of ERISA.

Plan Amendments

Existing plans that contain alternative forms of benefit that are subject to consent or discretion provisions, or other conditions that discriminate, must be amended by the first day of the first plan year for which these regulations are effective, such amendments to be effective as of that day. These amendments must eliminate (a) employer discretion or consent provisions applicable to the availability of alternative forms of benefit, and (b) other conditions with respect to such alternative forms of benefit that discriminate. Alternatively, the plan must be amended to eliminate the alternative forms of benefit that are subject to such discretion or consent provisions or other conditions that discriminate. In addition, existing plans that contain conditions applicable to alternative forms of benefit that may reasonably be expected to discriminate may be amended either to eliminate such conditions or to eliminate the alternative forms of benefit subject to such conditions. Furthermore, plans may not be amended to add employer discretion or consent provision or other conditions that discriminate with respect to an alternative form of benefit.

Effective Dates of This Regulation

Section 1.401(a)–4 of these regulations is generally proposed to be effective January 30, 1986, in the case of plans either adopted or made effective on or after that date. With respect to plans in existence (adopted and in effect) prior to January 30, 1986, the following effective dates are applicable. In the case of existing plans that are amended to add discriminatory provisions or conditions relating to the availability of an alternative form of benefit, of the type described herein, the regulation is proposed to be effective January 30, 1986, with respect to such alternative form of benefit. In the case of existing non-collectively bargained plans, the regulation is proposed to be effective for the second plan year commencing on or after January 30, 1986. For existing collectively bargained plans, the regulation is proposed to be effective for the earlier of (a) the third plan year commencing on or after January 30, 1986, or (b) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect on January 30, 1986, pursuant to which the plan is maintained.

Section 1.411(d)–4 is proposed, except in the case of adoptions of certain master or prototype plans, to be effective August 1, 1986 in the case of plans either adopted or effective on or after that date. Employers who adopt a master or prototype plan for which a sponsor applied to the Service for an opinion letter or or before December 31, 1984, and for which a favorable opinion letter was received after that date are deemed to have existing plans for purposes of this regulation. However, such adopting employers who cease to be covered under such a master or prototype plan prior to the proposed applicable effective date for their plan will be treated as though they had a new plan as of the date they cease to be so covered.

With respect to existing plans, other than master or prototype plans that are deemed to be existing plans, the following effective dates are applicable. In the case of existing plans that are amended to add provisions or conditions relating to the availability of an alternative form of benefit, of the type described herein, the regulation is proposed to be effective the first day of the first month commencing on or after six months after January 30, 1986, with respect to such alternative form of benefit. In the case of existing non-collectively bargained plans, the regulations are proposed to non-collectively bargained plans, the regulations are proposed to be effective for the second plan year commencing on or after January 30, 1986. For existing collectively bargained plans, these regulations are proposed to be effective for the earlier of (a) the third plan year commencing on or after January 30, 1986 or (b) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect on January 30, 1986, pursuant to which the plan is maintained. However, in the case of employers who adopt master or prototype plans that are deemed to be existing plans, the effective date will be the earlier of the second plan year commencing on or after January 30, 1986 or the first plan year commencing on or after January 30, 1987.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. The transitional rule provisions of these regulations, allowing plan amendments described above, are immediately effective. Thus, existing plans may make the plan amendments described above, thereby eliminating certain benefit alternatives, prior to the general effective date of these new rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All Comments will be available for public inspection and copying. A public hearing will be held upon written

request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–1–1.425–1

Income taxes, Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.411(d)–4 also issued under 26 U.S.C. 411(d)(6).

Par. 2. A new § 1.401(a)–4 is added immediately after § 1.401(a)–3 to read as follows:

§ 1.401(a)–4 Limitations on availability of alternative forms of benefit.

Q–1: Does a pension, profit-sharing or stock bonus plan satisfy section 401(a)(4) if, in form or operation, the availability of an alternative form of benefit favors the prohibited group?

A–1: No. Section 401(a)(4) provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders, or highly compensated (the prohibited group). When a plan provides for alternative forms of benefit, i.e., different forms of distribution commencing at the same time or the same form of distribution commencing at different times (see definition in § 1.411(d)–4, Q&A–1), the availability of each of these alternative forms of benefit is subject to this nondiscrimination requirement. Thus, the availability of such alternative forms of benefit may not favor the prohibited group. For example, a plan may not condition the availability of a single sum optional benefit in a manner that favors the prohibited group. This is true whether or not the particular benefit option is the actuarial equivalent of any other form of benefit under the plan.

Q–2: How is it determined whether or not a plan conditions the availability of alternative forms of benefit in a manner that violates, or may reasonably be expected to violate, the nondiscrimination requirements of section 401(a)(4)?

A–2: This determination must be based on all the surrounding facts and circumstances of the employer maintaining the plan. However, a condition is discriminatory if the group of employees to whom the benefit is available does not satisfy either the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B). Thus, the availability of a particular alternative form of benefit will not be considered discriminatory if the benefit is available to seventy percent or more of all employees. If the seventy percent test is not satisfied, the condition limiting availability will be discriminatory if it results in more than a reasonable difference between (a) the ratio of prohibited group employees to whom a particular alternative form of benefit is available to all prohibited group employees and (b) the ratio of employees (other than prohibited group employees) to whom the same alternative form of benefit is available to all employees (other than prohibited group employees). A condition with respect to the availability of a particular alternative form of benefit may reasonably be expected to violate the nondiscrimination requirements of section 401(a)(4) if, under the applicable facts and circumstances, there is a reasonable expectation that the condition will result in the benefit not being available to a group of employees that meets the requirements of section 410(b)(1)(A) or (B) set forth above. The following examples are illustrative:

Example (1). A plan conditions the availability of a single sum benefit alternative by limiting it either to (a) employees earning $50,000 or more in the final year of employment, (b) employees who furnish evidence that they have a net worth above a certain specified amount, or (c) employees who present a letter from an accountant or attorney declaring that it is in the employee's best interest to receive a single sum distribution. Whether such conditions are permissible depends on all the facts and circumstances of the employer maintaining the plan. However, all three of these conditions may reasonably be expected to discriminate in favor of the prohibited group in operation because of the probability of a significant positive correlation between the ability to meet these requirements and membership in the prohibited group.

Example (2). A plan limits the availability of a single sum optional benefit to employees employed in one particular division of the employer's company. All the employees of the company are participants in the plan. The division currently employs individuals who represent a nondiscriminatory classification of that company's employees and is unlikely to cease employing such a nondiscriminatory classification in the future. This condition with respect to availability does not result in discrimination nor may it reasonably be expected to do so.

Q–3: May a pension, profit-sharing or stock bonus plan provide that the employer or some other person, other than the participant (and, where relevant, other than the participant's spouse), through withholding consent or otherwise exercising discretion, may deny a participant an alternative form of benefit for which the participant is otherwise eligible?

A–3: No. Even though in certain circumstances this type of provision may satisfy the nondiscrimination requirements of section 401(a)(4), the provision results in the failure of the plan to satisfy section 401(a), including the requirements set forth in sections 401(a)(25) and 411(d)(6). *See* § 1.411(d)–4 Q&As 2–5. This result is true whether the consent or discretion in question is vested in the employer or in some other person. *See* § 1.411(d)–4 Q&A–4. The applicable effective dates with respect to such rules relating to consent or discretion are set forth in § 1.411(d)–4 Q&A–8.

Q–4: Will a plan provision violate section 401(a)(4) merely because it mandates a single sum distribution in the event that the present value of a participant's nonforfeitable accrued benefit is not more than $3,500?

A–4: No. A provision that mandates a single sum distribution if the present value of a participant's nonforfeitable accured benefit is not more than $3,500 will be deemed not to be discriminatory under section 401(a)(4). This is an exception to the general principles of this section based on sections 411(a)(11) and 417(e).

Q–5: If a plan contains a provision with respect to the availability of alternative forms of benefit that discriminates or may reasonably be expected to discriminate, what acceptable alternatives exist for amending the plan without violating section 411(d)(6)?

A–5: (a) The following transitional rules apply for purposes of making necessary amendments to existing plans, as defined in Q&A–6 of this section, that contain conditions governing the availability of one or more alternative forms of benefit that violate the nondiscrimination requirements of section 401(a)(4) or may reasonably be expected to violate such requirements. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of optional forms of benefits if permitted by regulations, and section 7805(b).

(b) If an existing plan conditions the availability of an alternative form of benefit in a manner that discriminates, the plan must be amended to eliminate such condition. Alternatively, the plan must be amended to eliminate the alternative form of benefit subject to such condition, including any early or late retirement benefit which is so conditioned. If an existing plan conditions the availability of an alternative form of benefit in a manner that may reasonably be expected to discriminate, the plan may be amended to either eliminate such condition or eliminate the alternative form of benefit subject to such condition.

(c) Any amendment permitted under paragraph (b) of this Q&A–5 to eliminate an alternative form of benefit must be made on or before the applicable effective date for the plan as determined under Q&A–6 of this section. Thus, after the applicable effective date, any amendment that eliminates an alternative form of benefit, whether or not such form of benefit is subject to conditions that discriminate or may reasonably be expected to discriminate, will violate the requirements of section 411(d)(6) to the extent that such alternative form of benefit is protected by section 411(d)(6).

Q–6: What are the effective dates for the rules in this section?

A–6: (a) *New plans.* This section is effective January 30, 1986, in the case of plans which are either adopted or made effective on or after such date. This effective date is applicable to such plans whether or not they are collectively bargained.

(b) *Existing plans.* Existing plans, for purposes of this section, are plans which are both adopted and in effect prior to January 30, 1986, Subject to the limitaitons in paragraph (c) of this Q&A–6, the following effective dates apply to existing plans for purposes of this section.

(1) *Non-collectively bargained plans.* In the case of existing non-collectively bargained plans, the regulation is effective for the first day of the second plan year commencing on or after January 30, 1986.

(2) *Collectively bargained plans.* in the case of existing collectively bargained plans, the regulation is effective for the first day of the earlier of (i) the third plan year commencing on or after January 30, 1986. or (ii) the second plan year beginning after the expiration of the last of the collective bargaining agreements in effect on January 30, 1986, pursuant to which the plan is maintained. Extensions of a collective bargaining agreement, if ratified on or after January 30, 1986, are disregarded.

(c) The delayed effective dates in paragraph (b) (1) and (2) of this Q&A–6 for existing plans are only applicable with respect to an alternative form of benefit if (1) both the alternative form of benefit and the condition to which it is subject were adopted and in effect prior to January 30, 1986, and (2) the condition to which it is subject is either discriminatory or may reasonably be expected to discriminate. If the conditions in the preceding sentence are not satisfied with respect to a particular alternative form of benefit, then this section is effective with respect to such alternative form of benefit as if the plan were a new plan.

(d) The transitional rule provided in Q&A–5 of this section is effective January 30, 1986.

Par. 3. A new § 1.411(d)–4 is added immediately after 1.411(d)–3T to read as follows:

§ 1.411(d)–4 Alternative forms of benefit.

Q–1: What is meant by "alternative forms of benefit" for purposes of this section?

A–1: This term encompasses the different forms of benefit payment available under a plan which provides that (a) a participant's benefits under the plan may be paid in more than one form (for example, life annuities, installment payments and single sum distributions), or (b) payment of a particular form of benefit may commence at some time earlier or later than the normal date for the commencement of such benefit. For example, a life annuity beginning at early retirement age and life annuity beginning at normal retirement age are alternative forms of benefit for purposes of this section.

Q–2: May a pension, profit-sharing or stock bonus plan provide that the employer may, through withholding consent or otherwise exercising discretion, deny a participant an alternative form of benefit for which the participant is otherwise eligible?

A–2: No. Such a provision will violate the requirements of section 411(d)(6), which applies to accrued benefits of pension, profit-sharing and stock bonus plans, to the extent that the consent or discretion may be exercised with respect to an alternative form of benefit protected by section 411(d)(6). In addition, in the case of a pension plan, such a provision violates the "definitely determinable" requirement of section 401(a), which applies to any alternative form of benefit available to participants under the plan, not merely to accrued benefits under section 411(d)(6). *See* § 1.401–1(b)(1)(i). However, see Q&A–5 of this section regarding the application of objective and clearly ascertainable conditions on the availability of an alternative form of benefit.

Q–3: Is the result in Q&A–2 of this section any different if the plan specifically limits the employer's exercise of discretion to choosing among alternative forms of benefit that can be demonstrated to be actuarially equivalent based on reasonable actuarial assumptions set forth in the plan?

A–3: No.

Q–4: Is the answer in Q&A–2 of this section any different if a plan permits the exercise of discretion by, or requires consent from, some person or persons other than the employer and the participant (and, where relevant, other than the participant's spouse)?

A–4: No. The term "employer" includes plan administrator, fiduciary, trustee, actuary and other persons for purposes of applying the rules of this section and § 1.401(a)–4. Thus, provisions permitting any person, other than the participant (and, where relevant, other than the participant's spouse), to deny the participant an alternative form of benefit otherwise available to the participant under the plan, violate the requirements of sections 401(a), including sections 401(a)(25) and 411(d)(6).

Q–5: May a pension, profit-sharing or stock bonus plan condition the availability of an alternative form of benefit on objective criteria that are specifically set forth in the plan?

A–5: Yes. Such provisions do not violate the requirements of section 411(d)(6) provided the criteria are objective, ascertainable, clearly set forth in the plan and not subject to the employer's discretion. For example, a plan may deny a single sum optional benefit to participants for whom life insurance is not available at standard rates provided this provision is specifically set forth in the plan. As another example, a plan may provide that an otherwise permissible single sum distribution alternative, based on

separation from service, may be available only in the event of extreme financial need, after taking into account the employee's other assets available to meet those needs, determined under standards specifically set forth in the plan. On the other hand, a plan may not condition the availability of alternative forms of benefits permitted under the plan on factors that are within the employer's discretion. For example, the availability of alternative forms of benefit in a defined benefit plan may not be conditioned on a determination with respect to the level of the plan's funded status because the amount of plan funding is within the employer's discretion.

Q–6: May a plan be amended to add a consent or discretion provision or other condition to an alternative form of benefit?

A–6: No. Adding a consent or discretion provision or other conditions with respect to the availability of an employee's accrued benefit in an alternative form of benefit that is within section 411(d)(6) effectively enables an employer to elminate or reduce an employee's accrued benefit within the meaning of such section. However, an amendment of the type described in Q&A–5 of this section that adds one or more objective and clearly ascertainable conditions on the availability of an employee's accrued benefit in an alternative form of benefit may be made with respect to benefits accrued after the later of the effective date of the amendment or the date such amendment is adopted. Also, after the effective date of this section, with respect to a pension plan, consent or discretion provisions may not be added with respect to any alternative form of benefit.

Q–7: If a plan contains discretion or consent provisions which violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section, what acceptable alternatives exist for amending the plan without violating the requirements of section 411(d)(6)?

A–7: (a) The following transitional rules apply for purposes of making necessary amendments to existing plans, as defined under the effective date provisions in Q&A–8 of this section, that contain discretion or consent provisions with respect to the availability of alternative forms of benefit that violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of optional forms of benefits if permitted by regulations, and section 7805(b).

(b) If an existing plan provides for employer consent or discretion with respect to the availability of an alternative form of benefit, the plan must be amended to eliminate such consent or discretion provision. Alternatively, the plan must be amended to eliminate the alternative form of benefit subject to a consent or discretion provision, including any early or late retirement benefit that is so conditioned.

(c) Any amendment permitted under paragrarph (b) of this Q&A–7 to eliminate an alternative form of benefit must be made on or before the applicable effective date for the plan as determined under Q&A–8 of this section. Thus, after the applicable effective date, any amendment that eliminates an alternative form of accrued benefit, whether or not such form of benefits is subject to employer consent or discretion, will be a violation of section 411(d)(6).

Q–8: What are the effective dates for the rules in this section?

A–8: (a) *New plans.* This section is effective August 1, 1986, in the case of plans that are either adopted or made effective on or after such date. This effective date is applicable to such plans whether or not they are collectively bargained.

(b) *Existing plans.* Existing plans, for purposes of this section, are those plans, with the exception of certain plans which are adoptions of master or prototype plans, which are both adopted and in effect prior to August 1, 1986. Employers who adopt a master or prototype plan for which a sponsor applied to the Service for an opinion letter on or before December 31, 1984, and for which a favorable opinion letter was received after that date, will be deemed to have existing plans for purposes of this section. *See* sections 4.01 and 4.02 of Rev. Proc. 84–23, 1984–1 C.. 457, 459, for the definitions of master and prototype plans. However, if such adopting employers cease to be covered under a plan which is an adoption of a master or prototype plan of the type described above, as a result of amendment of the plan or adoption of a new plan, prior to the effective date of this section with respect to their plan, then the effective date for such employers will be determined as though the plan were a new plan as of the date of such amendment or adoption of a new plan. Subject to the limitations in paragraph (c) of this Q&A–8, the following effective dates apply to existing plans for purposes of this section:

(1) *Non-collectively bargained plans.* In the case of existing plans other than collectively bargained plans this section is effective for the first day of the second plan year commencing on or after January 30, 1986.

(2) *Collectively bargained plans.* In the case of existing collectively bargained plans this section is effective for the first day of the earlier of (i) the third plan year commencing on or after January 30, 1986 or (ii) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect January 30, 1986, pursuant to which the plan is maintained. Extensions of a collective bargaining agreement, if ratified on or after August 1, 1986, are disregarded.

(3) *Master and prototype plans.* In the case of plans which are adoptions of master or prototype plans that are deemed to be existing plans under the provisions of this paragraph (b), the effective date will be the earlier of the second plan year commencing on or after January 30, 1986, or the first plan year commencing on or after January 30, 1987.

(c) The delayed effective dates in paragraph (b) (1) and (2) of this Q&A–8 for existing plans are only applicable with respect to an alternative form of benefit if both the alternative form of benefit and the consent or discretion provision or other condition to which it is subject are adopted and in effect prior to August 1, 1986. If the conditions set forth in this paragraph are not satisfied with respect to a particular alternative form of benefit, then this section is effective with respect to such alternative form of benefit as if the plan were a new plan.

(d) The transitional rule provided in Q&A–7 of this section is effective January 30, 1986.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–1959 Filed 1–29–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 773, 774, 779, 780, 783, and 784

Surface Coal Mining Permit Applications and Coal Exploration, Historic Preservation Requirements; Petition for Rulemaking

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

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) makes available to the public its final decision on a petition for rulemaking from the Society of Professional Archeologists (SOPA). The petition requested that OSMRE revise the historic preservation requirements found throughout various sections of 30 CFR Chapter VII by amending 30 CFR Parts 772, 773, 779, 780, 783, 784, and 788 (now 774). On December 13, 1985, the Director made a decision granting the petition in principle.

ADDRESS: Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315L, 1100 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone 202–343–7951.

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act, any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, the Director must first determine whether the petition has a reasonable basis. If the petition has a reasonable basis, notice is published in the **Federal Register** seeking comments on the petition and the Director may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under § 700.12(d), the Director's decision constitutes the final decision for the Department of the Interior.

II. The SOPA Petition

OSMRE received a letter dated September 15, 1983, from SOPA presenting a petition for revision of the historic preservation requirements found throughout various sections of 30 CFR Chapter VII by amending 30 CFR Parts 772, 773, 774 (formerly 788), 779, 780, and 784. Part 783 for underground mines would be subject to the same changes as Part 779 for surface mines.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. Subsequently, SOPA requested that the petition be reconsidered. SOPA was notified that the petition would be reconsidered; however, because several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, and SOPA was a party to the litigation, OSMRE postponed further consideration of the petition pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re: Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. 1985).

On August 9, 1985, the Director determined that the petition for amendment of the regulations had a sufficient basis to seek comments on the proposed rule changes. Accordingly, on August 23, 1985, OSMRE published in the **Federal Register** (50 FR 34167) a request for public comments on the amendments suggested by SOPA. The comment period began August 23, 1985, and was closed on October 7, 1985. The notice presented the petition and noted the availability of the OSMRE staff to meet with the public on the petition until the close of the comment period. Fifty-six persons submitted written comments during the public comment period.

The December 13, 1985, decision announced here the petition in principle. The decision accepts the general concerns of the petitioner while rejecting the specific language changes suggested by the petitioner. As a result of this decision, OSM will initiate rulemaking proceedings and publish a Notice of Proposed Rulemaking with an appropriate public comment period prior to the issuance of the final rulemaking notice.

The Director's letter response to the petitioner on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioner. It also contains a summary description of the issues raised by the petitioner, a discussion of the applicability of section 106 of the National Historic Preservation Act, OSMRE's current regulatory program, an analysis of the petitioner's proposed regulatory changes, and a discussion of the comments received on the petition.

Dated: January 24, 1986.

Jed D. Christensen,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Mr. Charles Niquette, Society of Professional Archeologists, 626 Portland Drive, Lexington, Kentucky 40503.

Dear Mr. Niquette: This letter is in response to the September 15, 1983, petition for rulemaking to the Office of Surface Mining Reclamation and Enforcement (OSMRE) on behalf of the Society of Professional Archeologists (SOPA) requesting amendments to certain rules promulgated as part of the Federal regulatory program.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. On March 9, 1984, SOPA requested that the petition be reconsidered. In July of 1984, OSMRE determined that the petition should be reconsidered; however, because several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, and SOPA was a party to the litigation. OSMRE postponed further consideration of the petition pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. 1985).

On August 9, 1985, the Director determined that the petition for amendment of the regulations had a sufficient basis to seek comments on the proposed rule changes. Accordingly, on August 23, 1985, OSMRE published in the **Federal Register** (50 FR 34167) a request for public comments on the amendments suggested by SOPA. The comment period began August 23, 1985, and was closed on October 7, 1985. Fifty-seven persons submitted written comments during the comment period. This letter informs you of my decision which, as provided in 30 CFR 700.12(d), constitutes the final decision for the Department of the Interior.

This letter is divided into six parts. The first part, Final Decision, summarizes this decision. The second part, Substance of the Petition, is a discussion of issues raised by the petitioner and the requested amendments. The third part discusses the Applicability of Section 106 of the National Historic Preservation Act (NHPA); the fourth describes the Current OSMRE Regulatory Program, and the fifth provides the Analysis of SOPA's Recommended Regulatory Changes. The sixth part, Comments Received, discusses comments submitted by persons other than the petitioner.

Final Decision

I am granting the petition to initiate rulemaking in principle. As a result, rulemaking will be initiated to address the concerns of the petitioner. As discussed herein, the specific language suggested by the petitioner is apparently premised on a misconstruction of the applicability of section 106 of the NHPA and, if implemented, would lead to unreasonable compliance costs that would not be commensurate with the benefits obtained. Although the specific language suggested by SOPA is not acceptable, certain of the petitioner's concerns are valid. Thus, OSMRE is developing appropriate regulatory language to address these concerns.

Substance of the Petition

The petitioner expressed concern that OSMRE's existing regulations are silent as to:

(a) How properties eligible for but not yet listed in the National Register of Historic Places are to be identified by applicants to conduct surface mining operations, and

(b) What a State regulatory authority is to do when mining will impact such a property.

The petitioner stated that absent guidance from the regulations on these matters, some States have reached the conclusion that they should establish procedures parallel with those used by the Department of the Interior and the Advisory Council on Historic Preservation (ACHP); other States require consideration only of properties already entered into the National Register of Historic Places (National Register) and exclude from any consideration in coal mine operation planning all historic properties except those that are publicly owned and included in the National Register. The petitioner requested that OSMRE provide clear guidance as to how properties eligible to but not yet listed on the National Register are to be identified and considered during the permit decision process, so that such properties are not lost without prior scientific study.

The petitioner suggested that the following language be inserted into the existing regulations to resolve its concerns.

(1) Amend 30 CFR 772.12(b)(8)(ii), 779.12(b), and 788.12(b) (now 774) by adding language similar to the following:

"To identify resources eligible for listing on the National Register of Historic Places, the applicant shall review files and publications made available by the State Historic Preservation Officer and other authorities on the history, prehistory, architectural history, and archaeology of the region in which the permit area lies, and conduct such field inspections as the State Historic Preservation Officer recommends in a manner consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards and guidelines."

(2) Amend 30 CFR 772.12(b)(8) by adding language similar to the following:

"A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that cultural, historical, and archaeological resources are not adversely affected during the proposed exploration or, if adverse effect is unavoidable, that the effect is appropriately mitigated."

(3) Amend 30 CFR 780.11 and 784.11 by adding language similar to the following:

"A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that properties included in and eligible for the National Register of Historic Places and known archaeological sites are physically preserved or subjected to such recordation and data recovery as is necessary to preserve their research and other values in the public interest."

(4) Amend 30 CFR 773.12 by adding language similar to the following:

"Pursuant to Section 106 of the National Historic Preservation Act, the Advisory Council on Historic Preservation and the State Historic Preservation Officer will be afforded the opportunity to consult with the regulatory authority and the applicant regarding the applicant's program for preserving historic properties under § 772.12(b)(8), § 780.11, or § 784.11, whichever is applicable."

Each of these four suggested amendments would impose additional obligations on applicants for surface coal mining or coal exploration permits.

Applicability of Section 106 of the National Historic Preservation Act

All of the specific suggestions offered by the petitioner are apparently based on the premise that permits to conduct surface coal mining operations issued by State regulatory authorities are subject to the provisions of section 106 of the NHPA. This section requires the head of any Federal agency, prior to authorizing the expenditure of Federal funds or prior to issuing a Federal license, to consider the effects of the Federal or federally assisted undertaking on historic resources. The section further requires that the ACHP be given a reasonable opportunity to comment on the undertaking.*

However, section 106 of the National Historic Preservation Act does not apply to the issuance of permits to conduct surface coal mining operations by State regulatory authorities. Although section 106 does apply to the Secretary's approval of State regulatory programs, surface coal mining operations permitted under those programs are not Federal or federally assisted or licensed undertakings. There is, therefore, no legal requirement in section 106 of the NHPA for including in OSMRE's permanent program regulations provisions necessitating consultation with the ACHP during permit processing or authorizing the State Historic Preservation Officer (SHPO) to establish requirements for field inspections, mitigation, or other activities related to the protection of historic properties.

Current OSMRE Regulatory Program

Although section 106 of the NHPA does not apply directly to State issuance of coal mining or exploration permits, OSMRE has provided for State protection of important historic resources, both under its current program and in grants to the States. In accepting financial assistance for its program, a State assures the Director of OSMRE that it will assist in OSMRE's compliance with section 106 by consulting with the SHPO on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with OSMRE's requirements to avoid or mitigate adverse impacts upon such properties. This assurance is required to be included in every Federal grant by the Office of Management and Budget (Circular A–102, attachment M).

On at least one occasion, OSMRE has specifically reminded a State of its obligation to satisfy this grant condition. OSMRE's regulatory program provides the basis and authority for State programs to assist OSMRE in protecting historic properties. Under 30 CFR 732.15(a), State programs must contain regulations that are no less effective than OSMRE's permanent program regulations. As part of the permanent program regulations, numerous provisions exist which authorize and direct State regulatory authorities to collect necessary information on historic properties, and to consider such properties during the permit decision process. This fact was recognized by the court in *In Re: Permanent II*, Mem. Op. at 73. The general policy is set forth at 30 CFR 773.12. This section states that, to avoid duplication, each State regulatory program shall provide for the coordination of review and issuance of surface coal mining permits with applicable requirements of the National Historic Preservation Act. Additionally, the regulations impose the following specific requirements:

- Applicants for a permit must identify eligible and listed sites based on all available information. [30 CFR 779.12(b), 779.24(i), 783.12(b), and 783.24(i)]. The regulations further specify that information is to include, but not be limited to, data of State and local preservation agencies.
- The SHPO is notified of all permit applications, and given an opportunity to comment. [30 CFR 773.13(a)(3)(ii) and 773.13(b)]
- The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [30 CFR 773.13]
- Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [30 CFR 773.13(c)]
- The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [30 CFR 773.15]. This modification could include a requirement to obtain additional information and conduct new analyses. The use of a field survey could be required by the regulatory authority at this time and would be one of the tools available to develop a complete application.
- Regulatory authorities should be able to demonstrate through the record of their decision that they have given consideration to a SHPO's well reasoned comments. [30 CFR 773.15]
- The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures. [30 CFR 773.15]
- Procedures are available for the administrative and judicial review of decisions on permits. [30 CFR part 775]

As demonstrated in the preceding paragraphs, ample authority is provided to State regulatory authorities to protect both listed sites and those eligible for listing on the National Register. With regard to any specific permit, the regulatory authority is given discretion as to the level of required

*The text of section 106 of the NHPA reads as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

additional information, analyses, and mitigation. Such flexibility is appropriate because of the diversity among the regions, States, and within the States of types and sizes of mining operations and the physical variability of the lands they affect. This is recognized in section 101(f) of the Surface Mining Control and Reclamation Act of 1977 (Surface Mining Act). However, such flexibility is not unbridled. In reviewing the States' implementation of their programs OSMRE would expect to find that the recommendations of the SHPO have been given consideration. If a regulatory authority were to consistently ignore well reasoned recommendations, it would not be in compliance with OSMRE's requirements for State programs, nor would it be fulfilling its obligation to assist the Director of OSMRE in compliance with section 106 of the NHPA as is required when the State accepts Federal financial support for its programs.

Analysis of SOPA's Recommended Regulatory Changes

SOPA suggests that under 30 CFR 772.12(b)(8), 779.12(b), and 788.12(b) (now 774), permit applicants be required to (1) review the SHPO's files and publications, and (2) conduct whatever field inspections the SHPO recommends.

As to the suggested file review, the applicant for a permit is currently required to identify the nature of cultural and historic resources listed or eligible for listing on the National Register and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. This would include the SHPO. There is not specific requirement for the applicant to search files, and typically this activity is performed by the SHPO in response to an applicant's inquiry, or if the applicant has neglected to contact the SHPO, in response to the regulatory authority's inquiry. The petitioner has not demonstrated any compelling reason why this aspect of the current rules is inadequate.

The new feature in the petitioner's proposal would be to require the permit applicant to conduct whatever field surveys the SHPO recommends. Under the current process, the SHPO does not have this decisionmaking authority. Rather, the State regulatory authority must consider the SHPO's request and determine the appropriate action, if any. The petitioner's language would change the existing decisionmaking process by giving the SHPO's more authority over this part of the permitting process than they now have, and more authority under State programs than they have under *any* Federal program. Under current rules, the SHPO advises the State regulatory authority. There is no authority in either the Surface Mining Act or the NHPA that would allow OSMRE to delegate the suggested authority to the SHPO. Additionally, the proposal would be a change away from a central decisionmaking authority, the State regulatory authority, and could confuse those involved in the process.

In its suggested amendments to 30 CFR 772.12(b)(8), 780.11 and 784.11 SOPA also requests that permit applicant's and State regulatory authorities be required to provide the ACHP and the SHPO an opportunity to consult regarding a program applicants would have to develop to preserve historic properties in the permit area. This suggestion would (1) require applicants to develop an historic preservation plan for *all* permit areas, and (2) establish a process similar to the process developed to implement section 106 of the NHPA by giving the SHPO and the ACHP an expanded role in the permitting process. The suggested language would give those two groups more authority than they have over Federal undertakings pursuant to section 106, since 106 requires only that the Council be given an opportuntiy to comment, not to consult.

At present, there is no requirement in the OSMRE's regulations for applicants to develop a program, during the permit application process, to address the preservation of historic properties. Such a plan would place a new and frequently unnecessary burden on applicants. Under existing rules the regulatory authority may, if appropriate, require an applicant to provide information on how harm to historic properties will be minimized or mitigated. Also, the current regulations would not prevent the applicant from developing a mitigation program in consultation with the SHPO and the ACHP and including it in the permit application. Moreover, as shown earlier, there is ample opportunity under current rules for the SHPO to consult with the regulatory authority regarding the presence and disposition of historic properties, especially because both are part of the same State government. The petitioner's language would change the existing decisionmaking process by giving the SHPO and the ACHP more authority over this part of the permitting process by establishing procedures closely resembling the Federal procedures for implementing section 106 of the NHPA. OSMRE is not convinced of the inadequacy of the current rules under which the State regulatory authority has the authority and responsibility to determine on a case-by-case basis what further action is needed. Imposition of a general requirement for all applicants would impose an additional regulatory burden the incremental benefits of which are far from certain.

Comments Received

OSMRE received 57 comments on the petition for rulemaking. These comments can be divided into two major groups: those in favor of the rulemaking and those against. Most of the former came from students of archeology, State Historic Preservation Officers, State archeologists, university faculty in anthropology and archeology, and various archeological and preservation professional groups. The comments opposed to the rulemaking came from individual industry commenters and from groups representing the coal industry.

Those in favor of the rulemaking were concerned with the vagueness of the current program, and with the variety of interpretations being given to this program by State regulatory authorities. The commenters pointed out that while some States are enforcing preservation aspects of the program stringently, others are doing little or nothing regarding the application or enforcement of their own State regulations concerning historic properties. Many commenters saw this as providing economic advantage to operators in some States while penalizing others in States where enforcement is stringent.

Additionally, many of the commenters in favor of the rulemaking asserted that numerous historic properties were being destroyed without recordation and study, resulting in a loss of a portion of America's heritage. Several stated that the lands' unsuitable petition process for preserving historic properties is lengthy and cumbersome. The respondents favoring regulation changes called for a national and uniform set of regulations that deals with the identification, evaluation, and treatment of significant historic properties. Some commenters stated that input by the SHPO and ACHP was lacking. Others believed that this involvement might not be appropriate, but offered suggested additions to the existing regulations to resolve the problems of vagueness and inconsistency in identification, evaluation, and treatment of important historic properties.

The comments from industry representatives opposed to the proposed rulemaking were more varied than the comments from those favoring rulemaking. They stated that there was not a problem with the regulations dealing with historic properties, but a problem in the implementation and administration of the regulations on a State-by-State basis. They suggested that this be resolved during the oversight process in which OSMRE annually reviews the operation of the State programs, and suggested that modifications should be specific to problem States, rather than nationwide. Industry commenters stated that the petitioner's suggested revisions would increase the costs and delays involved in surface coal mining and introduce an additional level of review, while failing to set limits on what could be required of the coal industry to protect historic properties. One commenter noted that issuance of permits to conduct coal operations issued by State regulatory authorities were not Federal undertakings and were therefore not subject to the same requirements to protect historic properties that Federal agencies must follow. Another pointed out that the petitioner's proposed language emphasized protection of currently unknown resources, and stated that it was the intent of Congress to protect only known resources.

All of the comments received have been carefully considered in OSMRE's analysis of the petition. Although the comments submitted by both those in favor of and those opposed to the proposed rulemaking were highly varied, a common theme occurs: the process for protecting important historic properties is unclear and is not applied in a uniform manner by the various State regulatory authorities. This is consistent with OSMRE's observations in correspondence with various State regulatory authorities.

industry, State Historic Preservation Officers, and other preservation professionals.

Based on the foregoing, I have concluded that (1) a need to initiate rulemaking exists to clarify existing provisions in OSMRE's permanent program regulations to ensure appropriate consideration of important historic properties by the State regulatory authorities; and (2) it would be inappropriate to propose the specific provisions suggested by the petitioner.

Sincerely,

Ted O. Christensen,

Acting Director.

[FR Doc. 86-2069 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 901

Permanent Regulatory Program; Public Comment Period

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment modifies requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E). This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on March 3, 1986, will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for February 24, 1986, at the address listed below under **"ADDRESSES."**

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business February 14, 1986.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone; (205) 254-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for review and copying at the OSMRE Field Office, the OSMRE Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the amendment by contacting the OSMRE, Birmingham Field Office.

Office of Surface Mining, Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

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 the Birmingham Field Office will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the date listed under *"DATES."* If no one requests to comment at a 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 a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submmission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions. The public hearing will continue on the special 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 OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE 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, notice of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

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 47 FR 22020-22058 (May 20, 1982) and 48 FR 34206 (July 27, 1983).

III. Proposed Amendment

On December 30, 1985, Alabama submitted a proposed amendment to its approved regulatory program to modify requirements for operations extracting coal incidental to extraction other minerals (Sub-chapter 880-X-2E). The rules outline the informational requirements necessary for such applications and criteria to be used by the Alabama Surface Mining Commission (ASMC) to determine the eligibility for the proposed operation for exemption, and establish conditions and requirements for maintaining such eligibility during the conduct of such operations.

The approval of the previous ASMC rules on incidental extraction was announced by OSMRE in a Federal Register notice on July 19, 1985, 50 FR

29379. The December 30, 1985 submission differs from the previously approved rules in the following ways:

1. The paragraphs are renumbered due to the addition of pargraph 2E–.02, Definitions, which is reserved for future use.

2. A change is made in paragraph 880–X–2E–.05(1)(a) concerning when applications for exemptions should be submitted.

3. Paragraphs 2E–.06(1) (b) and (c) are amended by rearranging language requiring that the 16⅔ percent be calculated by using only those minerals extracted from the same area as the coal that is extracted, and by deleting the requirement that the economic basis for the operation is the commercial use of sale of minerals other than coal.

Therefore, the Director OSMRE is seeking public comment on the adequancy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

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 OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require 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 would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements that 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.

Dated: January 24, 1986.

James W. Workman,

Deputy Director, Program Operations and Inspection.

[FR Doc. 86–2063 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 81–023]

Personal Flotation Device Pamphlet Content; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard, in cooperation with Underwriters Laboratories (UL), will hold a meeting to discuss revision of the text of the personal flotation device (PFD) pamphlet which is provided with each PFD sold for use on recreational boats. Some of the information currently in this pamphet is out of date and other information could be presented more effectively. All interested parties may present data, views, and comments, orally or in writing, on the required text. All information received will be considered in deciding on whether and how to revise the above mentioned regulation.

DATES: 1. *Meeting:* March 7, 1986, beginning at 9:00 a.m. The meeting is expected to end in the early afternoon.

2. *Notice of intent to attend:* To ensure that space is available contact Mr. Robert Scott, by February 19, 1986, at the address or phone number listed under **ADDRESSES.**

ADDRESSES: 1. *Meeting location:* Admiral Benbow Inn, 1200 N. Westshore Boulevard, Tampa, FL 33607.

2. *Notice of intent to attend:* Seating capacity is limited. To assure adequate meeting arrangements and to obtain a copy of proposed revisions to Underwriters Laboratories (UL) Standard 1123, persons wishing to attend are requested to contact: Mr. Robert Scott, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, Phone (312) 272–8800.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, Office of Merchant Marine Safety (G–MVI–3/14), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426–1444. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Coast Guard, in cooperation with Underwriters Laboratories, will hold a meeting to discuss revision of the required text of the personal flotation device (PFD) pamphlet which is provided, pursuant to 33 CFR Part 181, Subpart G, with each PFD sold for use on recreational boats. The text of the current pamphlet may be found in Section 25 of UL Standard 1123 and in 33 CFR Part 181, Subpart G. This meeting is open to the public.

The agenda for the meeting will be as follows:

1. Information to be provided in the pamphlet.
   a. General topics.
   b. Format.
   c. Content under each topic.
2. Reading level at which the information should be presented.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2046 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6682]

Proposed Flood Elevation Determinations; Virginia

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 41712 on October 15, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for Rockingham County, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in Rockingham

County, Virginia, previously published at 50 FR 41712 on October 15, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood Plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Source of flooding and location	Elevation in feet National Geodetic Vertical Datum
North Fork Shenandoah River:	
At downstream County Boundary	*952
Downstream side of State Route 617	*1,035
Downstream side of State Route 612	*1,143
At confluence of Capon Run	*1,332
At confluence of German River	*1,413
Little Dry River:	
At confluence with North Fork Shenandoah River	*1,171
Approximately 50 feet upstream of State Route 631	*1,400
At confluence of Old Road Hollow	*1,570
Approximately 30 feet upstream of confluence of Big Bear Hollow	*1,875
German River:	
At confluence with North Fork Shenandoah River	*1,413
Upstream side of State Route 700	*1,514
Downstream side of State Route 826 (Second crossing)	*1,604
At confluence of Persimmon Run	*1,661
At confluence of Cold Spring River	*1,763
Bennett Run:	
At confluence with Crab Run	*1,432
At confluence of Overly Run	*1,508
Downstream side of State Route 865	*1,569
Downstream side of State Route 824 (First crossing)	*1,680
Downstream side of State Route 824 (Second crossing)	*1,773
Elk Run:	
Confluence with South Fork Shenandoah River	*952
At confluence of West Swift Run	*1,069
Downstream side of State Route 624	*1,170
Approximately 1.2 miles upstream of State Route 624	*1,356
South Branch Naked Creek:	
At confluence with Naked Creek	*1,075
Approximately .6 mile upstream of confluence with Naked Creek	*1,110
Approximately 1.2 miles upstream of confluence with Naked Creek	*1,166
Dry Run:	
At confluence with South Fork Shenandoah River	*941
Approximately 1.2 miles downstream of State Route 759	*1,070
Upstream side of State Route 759	*1,178
Approximately 1.1 miles upstream of State Route 759	*1,300
Approximately 2.2 miles upstream of State Route 759	*1,443
Big Run:	
Confluence with South Fork Shenandoah River	*1,014
Approximately .9 mile upstream of U.S. Route 340	*1,089
Madison Run:	
At confluence with South Fork Shenandoah River	*1,059
Approximately 1.0 mile upstream of U.S. Route 340	*1,191
Approximately 2.1 miles upstream of U.S. Route 340	*1,272
Cub Run:	
At confluence with South Fork Shenandoah River	*1,016
Upstream side of State Route 652	*1,059
Approximately 50 feet upstream of State Route 672	*1,100
Approximately 150 feet upstream of State Route 665	*1,174
At Chesapeake and Western Railway	*1,293
Approximately 1.6 miles upstream of Chesapeake and Western Railway	*1,405
Stony Run:	
At confluence with South Fork Shenandoah River	*1,005
Approximately 75 feet upstream of State Route 641	*1,050
Approximately 100 feet upstream of State Route 966	*1,128
Approximately 1.2 miles upstream of State Route 23	*1,295
Congers Creek:	
At confluence with Mill Creek	*1,120
Approximately 1.0 mile downstream of State Route 276	*1,178
Approximately .7 mile upstream of State Route 276	*1,278
Pleasant Run:	
At confluence with North River	*1,139
Approximately 90 feet downstream of state Route 988 (Second crossing)	*1,214
Approximately .6 mile upstream of State Route 704 (Second crossing)	*1,327
Blacks Run:	
At confluence with Cooks Creek	*1,171
Upstream side of State Route 704	*1,180
Approximately 675 feet upstream County Boundary	*1,207
Dry River:	
At confluence with North River	*1,199
Upstream side of State Route 752	*1,293
Approximately 75 feet downstream of State Route 613	*1,430
Approximately 2.0 miles upstream of State Route 613	*1,531
Approximately 1.2 miles upstream of State Route 847	*1,676
Snapp Creek:	
At confluence with Muddy Creek	*1,409
Approximately .9 mile upstream of State Route 752 (Second crossing)	*1,488

Jerffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued January 22, 1986.

[FR Doc. 88-2017 Filed 1-29-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 86-10; RM-5101; FCC 86-27]

Provision of Access for 800 Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action initiates a rulemaking proceeding to consider the long-term obligations of exchange carriers under the Communications Act to provide 800 service access to interexchange carriers.

This action is taken by the Commission to determine whether a uniform, nationwide system of 800 access is necessary for an economically viable, nationwide service to be offered by multiple interexchange carriers, to determine which access features should be mandatory and which optional, and to determine how the costs of such access should be recovered.

This action will allow the Commission to take whatever actions are necessary to ensure that consumers throughout the nation will be able to take advantage of 800 service in a timely, efficient manner.

DATES: Comments are due on or before March 4, 1986, and reply comments on or before April 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Schlichting, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

In the Matter of Provision of Access for 800 Service (CC Docket No. 86-10, RM 5101).

Adopted: January 14, 1986.

Released: January 23, 1986.

By the Commission.

I. Introduction

1. On July 12, 1985, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a petition (the Petition) asking this Commission to initiate a rulemaking proceeding to consider the obligations of exchange carriers under the Communications Act to provide 800 service access to interexchange carriers (IXCs). Twelve parties filed comments in response to the Petition; seven parties filed reply comments; and Bell Atlantic and GTE Corporation filed further responses to comments on the Petition.[1] By this Notice, we initiate a rulemaking proceeding on the long-term 800 access obligations of exchange carriers, but deny the Petition with respect to the obligations of exchange carriers in the short-term.

II. Background

A. Current Provision of 800 Service

2. 800 service (or INWATS) is an interexchange service in which the called party, rather than the calling

[1] In this order, we grant motions by Bell Atlantic and GTE Corporation to file further responses to comments. A list of parties filing pleadings in this proceeding is attached as Appendix A.

party, subscribes to the service and pays for calls. The service provides businesses and other organizations a means of providing potential customers, or other persons with whom they wish to communicate, a convenient and free method of contacting them. An 800 service subscriber may choose to pay for incoming calls from any telephone in the country or may decide to limit its coverage to telephones in one or more of five concentric geographic bands around the subscriber's receiving location. 800 service is one of the fastest growing telephone services, with revenues that were in excess of $3 billion in 1983 and were increasing at the rate of 15–20% per year.[2]

3. From 1967, when AT&T first introduced 800 service, until 1981, calls were handled by designated originating and terminating switching offices that employed a special 800–NXX routing and screening methodology that would verify that the call originated from a subscribed service area and route the call over the network for completion. The system was quite inflexible because every digit in the 800 number had significance for the screening and routing functions. As a result, subscribers had no choice of 800 numbers and had to use different 800 numbers for interstate and intrastate calls. In addition, any change in the receiving location or in the geographic bands of coverage required a change in the 800 number.

4. In 1981, AT&T began providing 800 service using its Common Channel Interoffice Signaling (CCIS) system and a data base containing 800 service information. Under this system, an 800 call is routed to an Originating Screening Office (OSO). The call is held at the OSO while the 800 number and the 3-digit Numbering Plan Area, or area code, of the call's origin are provided to the 800 service data base through the CCIS signalling system. The data base not only checks to ensure that the call is from a service area for which the subscriber has paid, but also translates the 800 number into a standard ten-digit number, which is returned to the OSO for routing over AT&T's regular network to the subscriber's local exchange carrier for termination over a service-dedicated line.

5. The data base system is a significant improvement over the previous system. A customer may now use a single 800 number for both interstate and intrastate calls and may choose its own 800 number for marketing purposes, such as 800–CLUB–MED. It may retain that number even if it changes its receiving locations or the geographic bands from which 800 calls are authorized. A subscriber may also allocate certain fixed percentages of calls to different receiving locations or even route calls to different receiving locations depending on the originating area or the time of day.

B. Consideration of 800 Access in the Antitrust Proceeding

6. The District Court and the Department of Justice (DOJ) have extensively considered various 800 access issues under the *Modification of Final Judgment (MFJ)* and the Plan of Reorganization in the AT&T antitrust proceeding.[3] Most importantly, the Plan provided that the 800 service data base system would belong to AT&T because it performed interexchange, and not exchange access, functions. AT&T must lease access to the system to the Bell Operating Companies (BOCs) for provision of intraLATA 800 service, but it need not allow the BOCs to use the system in a way that allows direct or indirect access by other IXCs (OCCs). The Plan also determined that the 800 prefix is not AT&T's property, so that both the BOCs and the OCCs are entitled to use it for INWATS service. The Plan established as well that the BOCs' Central Staff Organization (now Bell Communications Research, or "Bellcore") will administer the North American Numbering Plan to assign 800 numbers and that 800 directory assistance will be an interexchange, interLATA service and thus beyond the authority of any BOC.

7. In December 1983, DOJ filed a motion asking the Court to grant the BOCs access to AT&T's CCIS data base system so they could route 800 calls for the OCCs while the BOCs develop their own data base facilities. DOJ contended that the requested amendment of the Plan and temporary waiver of the *MFJ* prohibition against BOC provision of interLATA services were necessary to allow the BOCs to provide equal 800 access to the OCCs and to permit competition to develop in the lucrative 800 market. Otherwise, DOJ contended, the BOCs would be forced to implement a less desirable NXX interim access plan, under which the first three digits of the 800 number would identify the IXC chosen by the subscriber. The DOJ motion was supported by the BOCs and several OCCs, including GTE Sprint, MCI, Western Union, and SBS.

8. In January 1985, the Court denied DOJ's motion.[4] It found that the NXX access plan provided the OCCs with a level of signal quality equivalent to that provided to AT&T and that the NXX plan could be provided with minimal disruption. The Court also found that the NXX plan would not violate the equal access provisions of the decree because the BOCs would provide both AT&T and the OCCs with the identical signal—the dialed 800 number. The Court further relied on the absence of any contention that the cost to the OCCs of developing their own data bases in the interim would entirely frustrate entry during the interim period or that any delay in the availability of competitive 800 service would preclude long-term competition. The Court noted as well that DOJ's plan might conflict with the Consent Decree by permitting the BOCs to provide interexchange services. The Court did find that the BOCs were entitled to obtain from AT&T the hardware, software, and know-how necessary to develop their own data base system.

C. Current BOC Efforts To Provide 800 Access

9. The BOCs have under development a data base plan for 800 access that would be very similar in certain respects to the CCIS data base system. Under the plan, the BOCs would establish a coordinated system of data bases and and a signaling system to handle 800 calls. The originating BOC would route an 800 call to one of its Service Switching Points (SSPs), which would query that BOC's data base. At minimum, the data base would inform the SSP which IXC was to carry the call so that the SSP could route the call to the IXC for completion. The BOC data base system also could determine whether the call was from a subscribed area, translate the 800 number to a standard ten-digit number for further routing, route the call to different IXCs or to different receiving locations based on the time of day or the call's origin, provide automatic least-cost routing, or provide statistical information to subscribers on the nature of their 800 traffic. Thus, like AT&T's data base system, the BOC data base system would allow customers to select a single, verbally significant 800 number and make various changes in service without changing that number. In addition, the BOC data base system would allow a customer to change IXCs

[2] Bell Atlantic Petition for rulemaking at 3.

[3] *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*MFJ*); *United States v. American Tel. and Tel. Co.*, 569 F. Supp. 1057 (D.D.C.), *aff'd sub nom. California v. United States*, 104 S.Ct. 542 (1983) (approval of Plan of Reorganization).

[4] *United States v. American Tel. and Tel. Co.*, 604 F. Supp. 316 (D.D.C. 1985).

or have different IXCs provide service from different locations or at different times of day under a single, nationwide 800 number.

10. The development and implementation of the BOC data base plan will take some time. While estimates vary, it apparently will not be available until late 1987 or even late 1988. As for BOC provision of 800 access in the short term, since the issuance of the Court's decision denying them interim access to AT&T's data base, the BOCs have started updating their equal access compliance plans. Although some initially questioned the wisdom of using the NXX plan for the period preceding implementation of their data base plan, all the BOCs apparently have now agreed to provide that form of access in the short term.

D. 800 Access Issues in OCC Joint Petition

11. On June 17, 1985, GTE Sprint Communications Corporation, US Telecom, Inc., Allnet Communication Services, Inc., and United States Transmission Systems, Inc. (OCC petitioners) filed a joint petition that raised significant questions about access for 800 service (Joint Petition). The petitioners contended that the 800 data base system is an AT&T "monopoly endowment" that threatens effective long-distance competition. As a remedy, they asked that AT&T be required to permit the OCCs access to the 800 data base in order to allow competitive provision of 800 service until the OCCs build their own data bases. The OCC petitioners' primary legal argument was that all ratepayers should be allowed to benefit from the 800 data base because it is a quasi-public asset funded by those ratepayers. AT&T responded that (i) the 800 data base system belongs to AT&T's shareholders and not to ratepayers; (ii) the Commission lacks authority to grant the requested relief because it cannot disturb the District Court's assignment of assets under the MFJ and Plan of Reorganization or alter the corporate structure of AT&T; and (iii) granting such access would remove incentives for AT&T and the OCCs to innovate.

12. On November 14, 1985, we adopted a Notice of Proposed Rulemaking in response to the Joint Petition. We there decided to consider the OCC petitioners' request for access to AT&T's 800 service data base in this proceeding.[5]

[5] *GTE Sprint Communications Corporation, US Telecom, Inc., Allnet Communications Services, Inc, and United States Transmission Systems, Inc.: Joint Petition for Expedited Rulemaking*, CC Docket No. 85-348, FCC 85-604 (released Dec. 5, 1985) (hereinafter *Joint Petition NPRM*).

III. The Long-Term Obligations of Exchange Carriers to Provide 800 Access

13. In its Petition, Bell Atlantic requests that this Commission initiate a rulemaking proceeding to adopt policies or rules on the long-term obligations of exchange carriers to provide 800 access so that there can be a single, nationwide form of 800 access. Such uniform system of access allegedly is essential to competitive 800 service. Bell Atlantic advocates that this Commission require all exchange carriers to provide 800 access through the BOCs' coordinated data base plan.

A. Comments

14. The following parties, representing a vast majority of those filing comments, favor a rulemaking proceeding on long-term 800 access issues: the Ameritech Operating Companies (Ameritech); BellSouth Corporation; Pacific Bell and Nevada Bell (PacTel); Southwestern Bell Telephone Company (Southwestern Bell); GTE Corporation; Lexitel Corporation; the United Telephone System, Inc. (United Telephone); and US Telecom, Inc. They all agree that express Commission policies are essential to ensure universal, uniform 800 access. Most strongly favor the BOC data base plan. Southwestern Bell and GTE, however, urge us to require only the provision of those aspects of BOC data base access essential to adequate, nondiscriminatory service and to let the market determine the availability of more sophisticated vertical services. United Telephone suggests that this Commission defer any rulemaking proceeding on long-term 800 access until exchange carriers have had a reasonable opportunity to resolve questions about the economics of the BOC data base plan.

15. Only two parties totally oppose a rulemaking proceeding on the form of long-term 800 access—Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West); and American Telephone and Telegraph Company (AT&T). They contend that there is no need for express Commission policy because the BOCs already are developing a coordinated data base plan that will assure uniformity among the BOCs. US West argues that this Commission should defer action until there is an exchange carrier refusal to connect an interexchange carrier for 800 service. AT&T suggests that CC Docket 78-72, Phase III, is the appropriate forum if consideration of independent exchange carrier obligations to provide 800 access is judged necessary.

B. Discussion

16. By this Notice, we initiate a rulemaking proceeding on the long-term oligations of exchange carriers under the Communications Act to provide access for 800 service to all interexchange carriers requesting such access. We tentatively conclude that a uniform, nationwide system of 800 access is necessary for an economically viable, nationwide 800 service to be offered by multiple interexchange carriers. We also tentatively conclude that the BOC data base plan appears to have substantial benefits for 800 service subscribers. For instance, the plan would allow number portability and a multiple-carrier capability that would enable subscribers to choose different interexchange carriers for calls from different areas or at different times-of-day on one 800 number. In addition, if exchange carriers offered number translation and the ability to screen calls to ensure they are from subscribed areas, small interexchange carriers could provide unadorned, but competitive 800 service without having to invest substantially in their own data bases.

17. We also conclude that the current efforts by the BOCs to develop a coordinated data base plan do not obviate the need for a rulemaking proceeding. First, the BOC data base plan under development potentially offers a wide variety of features, many of which may not be necessary to establish a basic 800 access service. In a rulemaking proceeding, we can consider whether we should specify which features will be mandatory and which optional. Second, a Commission determination of how the costs of developing and implementing a data base plan will be recovered would appear to be useful for reasoned decisionmaking by the BOCs in their development efforts. Third, a rulemaking proceeding is necessary to consider how and when the independent exchange carriers should provide 800 access. Their provision of compatible 800 access would appear to be necessary to ensure that consumers throughout the nation will be able to take advantage of 800 service, and we know of no commitment to provide such access.

18. Although we have tentatively concluded that the BOCs should be required to implement a data base system for 800 access, there are several specific issues that need to be addressed:

(a) Whether detailed Commission rules are necessary concerning the implementation of any exchange carrier long-term 800 access obligation under the Communications Act, including a schedule for such implementation;[6]

(b) Whether any such obligation should be limited to a simple ten-digit screening of calls for routing to an interexchange carrier selected by the subscriber;

(c) Whether exchange carriers should be permitted, or required:

(i) To screen 800 calls to ensure they are from locations for which the subscriber has paid;

(ii) To offer interstate 800 subscribers multiple-carrier capabilities;

(iii) To offer interstate 800 subscribers least-cost routing; and

(iv) To offer 800 number translation capabilities;

(d) What obligations should be imposed on independent exchange carriers to provide 800 access to interexchange carriers, and on what schedule;

(e) The amount of the costs of implementing any mandatory or voluntary 800 access and how they should be recovered from 800 access and any other services to be provided via the data base plan;[7] and

(f) If certain capabilities are held to be optional, how their pricing should be unbundled.

19. We seek comments on these specific issues as well as on the general question of the appropriate long-term obligation of exchange carriers to provide 800 access. Finally, we invite comment on whether any of the proposals under consideration might conflict with the *MFJ*.

IV. Denial of Bell Atlantic's Petition With Respect to Interim 800 Access

20. With respect to interim 800 access, Bell Atlantic urges us to initiate a rulemaking proceeding because, it alleges, "there is disagreement over the need to offer interim short-term access and, if there is such a need, how that access should be provided."[8] Bell Atlantic advocates that we decide in such a rulemaking proceeding that the Communications Act permits exchange carriers to forgo providing interim access in order to devote their resources to rapid implementation of the BOC data base plan. Bell Atlantic further argues that if we conclude that interim 800 access is nevertheless necessary, we order AT&T to make its 800 data base system available to the BOCs for that purpose and allow Bell Atlantic to recover its costs from all interexchange carriers that avail themselves of 800 access.

A. Comments

21. Seven commenters favor such a rulemaking proceeding: BellSouth, PacTel, Southwestern Bell, GTE, Lexitel, US Telecom, and United Telephone. In summary, they argue that this Commission needs to resolve the current controversy about exchange carriers' interim 800 access obligations to ensure that such access, if provided, is uniform and universal.

22. MCI and SBS both urge that action on interim access be deferred until DOJ reaches a conclusion concerning the BOCs' interim access obligations under the *MFJ*. Both contend, however, that some form of interim 800 access is essential and recommend that this Commission use the OCCs' Joint Petition, if necessary, to ensure that access is provided.

23. AT&T and US West oppose a rulemaking proceeding on the interim 800 access obligations of exchange carriers. AT&T argues that the District Court already has decided that exchange carriers have duties under the *MFJ* to provide interim 800 access and to use the NXX plan, and that this Commission has no authority to grant any relief from those obligations. Several parties, including Bell Atlantic, PacTel, US West, GTE, Lexitel, and SBS, appear to contest AT&T's interpretation of the *MFJ* and the Court's decision on DOJ's motion on interim 800 access and argue generally that it does not legally restrict this Commission's options under the Communications Act. US West argues that a rulemaking proceeding is unnecessary because implementation of interim NXX access is underway and because questions concerning cost recovery can be addressed during review of its NXX access tariff filing.

24. The parties disagree about whether there should be any interim access. Bell Atlantic, BellSouth, PacTel, and US Telecom all argue there should be no interim access. They claim it will divert significant resources from development of the data base plan and thus substantially delay its implementation. United Telephone similarly argues that it, as an independent exchange carrier, should have no interim access obligation because such access would be costly and burdensome and of dubious benefit given the limited OCC presence in United Telephone areas. By contrast, AT&T, Ameritech, Southwestern Bell, US West, MCI, and SBS contend that interim service (in the form of the NXX plan) can be implemented relatively quickly and inexpensively. GTE argues that NXX access will be costly, but that some form of interim access is necessary because the BOC data base plan will not be available until late 1988.

25. The parties also disagree about Bell Atlantic's request in the alternative that, if there is to be interim access, this Commission require AT&T to allow use of its 800 data base system. Only Lexitel and US Telecom join in this request. GTE advocates that we order that the data base be used to sort calls among interexchange carriers, but that no number translation or time-of-day routing be allowed. GTE asserts that such a limited order would avoid problems under the *MFJ*, speed the availability of interim service, and make it less expensive. AT&T argues that the District Court's ruling prohibits BOC use of the data base for interim 800 access. AT&T, Ameritech, and US West contend that interim use of the data base is not feasible at this point because it would take too long to implement.

26. On the question of pricing, Bell Atlantic asks that costs be recovered from all IXCs requesting 800 access (presumably including AT&T) on a traffic-sensitive basis. Southwestern Bell and US West state that they plan to recover their costs from all IXCs through cost-based access charges, with no discounts. MCI and GTE urge that the OCCs be given a discount if interim NXX access is provided because that access is inferior to that provided AT&T.

27. In further response, Bell Atlantic and GTE state that they have decided to provide interim NXX access. They both still urge the Commission to initiate a rulemaking proceeding to ensure the universal availability of interim 800 access.

B. Discussion

28. We have decided that a rulemaking proceeding on interim 800 access is unnecessary. The question of interim 800 access has been extensively considered in the antitrust proceeding

[6] At least two sets of comments raise questions about the level of AT&T's cooperation with the BOCs in the development of the BOC data base system. On the assumption that we decide that the BOC data base system should be implemented on a nationwide basis, we invite comments with respect to actions this Commission can and should take in expediting implementation of that system.

[7] For instance, should mandatory 800 access costs be recovered from all interexchange carriers or only those carriers offering 800 service? Should AT&T be exempted, either wholly or partially, on the grounds that it already has developed its own 800 data base system? Persons who comment on this question are encouraged to suggest amendments to the Part 69 access charge rules that would implement a decision to recover 800 access costs in a particular manner.

[8] Bell Atlantic Petition for Rulemaking at 1.

since December 1983. We understand that the BOCs, including Bell Atlantic, have recently informed the DOJ that they will provide interim 800 access under the NXX plan. GTE also will be providing interim NXX access. The record before us indicates that the NXX access plan should be able to provide relatively quick and inexpensive 800 access. By contrast, it is unclear that access to the AT&T data base system could be implemented significantly before implementation of a long-term access plan. We see little, if anything, to be gained by commencing a rulemaking proceeding on interim 800 access that may in itself inhibit the provision of any form of interim 800 access to the OCCs.[9]

29. We also deny Bell Atlantic's request that we initiate a rulemaking proceeding to decide how the costs of providing interim 800 access should be recovered. Bell Atlantic has estimated that its costs to provide NXX access will amount only to $3 million. Southwestern Bell has stated that implementation of NXX access will not require significant resources. US West has represented that tariffs for such cost recovery will be filed shortly. The Part 69 access charge rules apportion all exchange carrier interstate costs, including costs that may not have been anticipated at the time those rules were adopted, among the access elements and the interexchange category. The petition and comments do not demonstrate that application of the present access charge rules to the costs of providing interim 800 access will produce any signficant distortion that would warrant changes in those rules.[10]

V. Ordering Clauses

30. Accordingly, it is hereby ordered that the Petition for Rulemaking requested by Bell Atlantic is granted to the extent indicated herein and otherwise denied.

31. It is further ordered that the requests concerning AT&T's 800 service data base system in the Joint Petition for Expedited Rulemaking filed by GTE Sprint Communications Corp., US Telecom, Inc., Allnet Communications Services, Inc., and United States Transmission Systems, Inc. (RM 5057) are denied.

32. Accordingly, it is ordered that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on the actions proposed in this Notice on or before March 4, 1986, and reply comments on or before April 1, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

33. It is further ordered that the motions by Bell Atlantic and GTE Corporation to file further responses to comments are granted.

34. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever comes earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.

35. It is further ordered that the Secretary of the Federal Communications Commission shall effect publication of this Notice of Proposed Rulemaking in the Federal Register.[11]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

The following parties filed comments on the petition for rulemaking filed by the Bell Atlantic Telephone Companies (Bell Atlantic):

American Telephone and Telegraph Company (AT&T);

The Ameritech Operating Companies (Ameritech);

BellSouth Corporation;

GTE Corporation;

Lexitel Corporation;

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[9] We also reject the OCCs' argument that they should be granted interim access to AT&T's 800 data base on the grounds that it is a quasi-public monopoly endowment. In the *Joint Petition NPRM*, we rejected the "monopoly endowments" argument as applied to the joint petitioners' request for access to AT&T's advanced operating systems for automated credit card service, 900 service, and interLATA coin-sent paid service. We reasoned that this argument, if unqualified, proves too much because it would appear to entitle the OCCs to access to virtually all of AT&T's corporate property. In addition, it is not clear under this argument when AT&T's development efforts ceased being quasi-public in character. Because AT&T is still subject to rate regulation, the argument might even require OCC access to systems currently under development. *Joint Petition NPRM* at para. 55 n.50. Thus, we here reaffirm our decision not to accept the argument that the OCCs should be permitted unfettered access to those systems simply because AT&T developed certain operating systems in a less competitive environment than prevails today.

[10] On December 31, 1985, US West filed a petition with us seeking waiver of certain sections of Part 69 of our rules to the extent necessary to allow the introduction of a separate rate element for recovery of the costs incurred in the provision of exchange access for 800 service. We have not considered in this proceeding, and express no opinion on, the propriety of permitting an exchange carrier to employ a separate rate element for recovering the costs of providing interim NXX access.

We decline as well to initiate a rulemaking proceeding solely to consider the interim 800 access obligations of independent exchange carriers not a party to the AT&T antitrust proceeding. GTE will be providing interim NXX access. We understand as well that many independent exchange carriers now use the BOCs to route their originating 800 calls and thus presumably will provide interim access through the BOCs' NXX system. Other independent exchange carriers may find it in their economic interest to provide interim 800 access through their own implementation of the NXX system. We therefore conclude that a rulemaking proceeding on the interim access obligations of independent exchange carriers is not likely to increase the availability of 800 access significantly beyond that which would otherwise occur during the transition to implementation of a data base plan.

[11] The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-12, are not applicable to this proceeding. This Commission has found that local exchange carriers, the parties directly subject to our access rules, do not come within the Act's definition of a "small entity." *Id.* section 601; *see MTS/WATS Market Structure*, 93 F.C.C.2d 241, at paras. 358-62 (1983).

MCI Telecommunications Corporation (MCI);
Pacific Bell and Nevada Bell (PacTel);
Satellite Business Systems (SBS);
Southwestern Bell Telephone Company (Southwestern Bell);
US Telecom, Inc.;
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West); and
United Telephone System, Inc. (United Telephone).

The following parties submitted reply comments:

AT&T;
Bell Atlantic;
GTE;
PacTel;
SBS;
Southwestern Bell; and
US West.

Bell Atlantic and GTE filed further responses to comments, along with motions for leave to file those responses.

[FR Doc. 86-1982 Filed 1-29-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change of location for a public hearing.

SUMMARY: In reference to a notice of public hearings that was published January 23, 1986, 51 FR 3087, the Gulf of Mexico Fishery Management Council has changed the location for the public hearing to be held February 18, 1986, to review Amendment 1 to the Spiny Lobster Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813-228-2815.

In FR Doc. 86-1421 appearing on page 3087 in the issue of January 23, 1986, the following change is made: On page 3087, column 3 under the "**SUPPLEMENTARY INFORMATION**" heading, the location for the hearing scheduled for February 18, 1986, is changed to Franklin County Courthouse, Main Street (U.S. 98), Apalachicola, Florida.

Dated: January 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2062 Filed 1-29-86; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donation for the Colville Reservation Indian Tribe in Washington State

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Colville Indian Tribe of the Colville Indian Reservation in Washington has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Colville Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of this tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. This donation by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on January 27, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-2098 Filed 1-29-86; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Metaline Falls Critical Area RC&D Measure Plan Environmental Assessment; Metaline Falls, WA

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 Metaline Falls Critical Area Treatment RC&D Measure Plan—Environmental Assessment, Pend Oreille County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, West 920 Riverside, Room 360, Spokane, Washington 99201-1080; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment and measure plan 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, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to minimize the occurrence of, and damages from, landslides along the highway and railroad south of Metaline Falls that threaten life, reduce visual quality and damage the county highway and railroad system. This objective agrees with the USDA National Program for Soil and Water Conservation, Soil and Water Resource Conservation Act of 1977 (RCA) and the Idaho-Washington Resource Conservation and Development Area Plan.

The 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 Lynn A. Brown.

No administrative action on the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: January 21, 1986.

Lynn A. Brown,

State Conservationist.

[FR Doc. 86-1964 Filed 1-29-86; 8:45 am]

BILLING CODE 3410-16-M

Wellpinit Flood Prevention RC&D Measure Plan Environmental Assessment; Wellpinit, WA

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 Wellpinit Flood Prevention RC&D Measure Plan—Environmental Assessment, Stevens County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, West 920 Riverside, Room 360, Spokane, Washington 99201-1080; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment and measure plan 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, Lynn A. Brown, State Conservationist, has determined that the

preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing damages to Tribal buildings from flooding due to snowmelt, storm runoff and high-intensity rainstorms. The planned works of improvement include the installation of drain tile, rain gutters, sump pump and a water collection system at the Tribal Center.

The 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 fingle copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: January 21, 1986.

Lynn A. Brown,

State Conservationist.

[FR Doc. 86-1970 Filed 1-29-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Meeting

Time and Date: Sunday, February 2, 1986 at 1:00 p.m., and Monday, February 3, 1986 at 8:30 a.m.

Place: Sunday meeting, Feburary 2, to be held at More Hall, University of San Diego Law School, in the Grace Court Room. Monday meeting, February 3, to be held at Camino Hall, Camino Theater, University of San Diego, Alcala Park, San Diego, California 92110.

Status: The meeting on February 2 will be an executive session. The meeting on February 3 will be open to the public. Matters to be Considered:

Executive Session

Status of personnel, staffing evaluations, budget, fundraising, office space problems, review of proposed publication drafts, evaluation of pending proposals for project recognition.

Open Session

Report of committees on progress in commemorative plans and projects, status of legislation and appropriations, announcement of project recognition decisions, discussion and reception of testimony on proposals, discussion of plans for regional and national bicentennial projects.

Contact Person For More Information: Gene Mater, Special Assistant to the Director, 734 Jackson Place, NW., Washington, DC 20503 Tel. (202) USA-1787.

Supplementary Information: The purpose of this meeting is to give the Commission an opportunity to review the current status of operations and report on activities. It will also provide a further opportunity for witnesses and others to advise the Commission on programs.

Dated: January 27, 1986.

Mark W. Cannon,

Director.

[FR Doc. 86-2018 Filed 1-29-86; 8:45 am]

BILLING CODE 6340-01-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m., on February 19, 1986, at the Yale University, Ray Tompkins House, Varsity Room, Tower Parkway, New Haven, Connecticut. The purpose of the meeting is to review plans for a proposed study of affirmative action in the construction industry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Stewart or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1965 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 5:00 p.m., on February 22, 1986, at the Jacksonville Airport Hilton Hotel, 1400 Dixie Clipper Drive, Jacksonville, Florida. The purpose of the meeting is to plan for the Orlando and Jacksonville community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Paul Porter, or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1966 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on February 21, 1986, at the Portland Building, 1120 S.W. Fifth Avenue, Room "A", Portland, Oregon. The purpose of the meeting is to plan programs for the remainder of FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246, (TDD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1967 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning subcommittee of the West Virginia Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:00 a.m., on February 20, 1986, at the KB&T Center, Wheat First Securities, 10th Floor Conference Room, 500 Virginia Street, Charleston, West Virginia. The purpose of the meeting of the meeting is to plan future activities of the advisory committee related to administration of justice, housing, employment, education and voting.

Persons desiring additional information, or planning a presentation to the Committee, should contact subcommittee Chairperson, Marcia Pops or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717 (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1968 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m., on February 20, 1986, at the Christ Church United Methodist Building, Quarrier and Morris Streets, Charleston, West Virginia. The purpose of the meeting is to review subcommittee recommendations for future activities and to hear from Federal, State and local officials concerning the use of Community Development Block Grant funds to establish and operate local human rights commissions in West Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam Kelly or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1969 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

[Docket No. 51223-5223]

National Oceanic and Atmospheric Administration

An Evaluation of the Implementation of the Magnuson Fishery Conservation and Management Act; Availability of Paper and Inquiry

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

ACTION: Notice of availability of a draft discussion paper, "An Evaluation of the Implementation of the Magnuson Fishery Conservation and Management Act;" request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration announces the availability for review and comment of a draft discussion paper concerning the effectiveness of the institutional arrangements and the fishery management process under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The paper was prepared by a NOAA/Council Task Group established by the NOAA Administrator and composed of representatives of the National Marine Fisheries Service and the Regional Fishery Management Councils. Copies of the paper may be obtained from the address below.

DATE: Comments should be submitted on or before April 30, 1986.

ADDRESS: Comments should be sent to Richard B. Roe, Director, Office of Fisheries Management, National Marine Fisheries Service F/M1, Washington, DC 20235. Write on the envelope "Comments on the Task Group Discussion Paper."

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, (202-634-7218).

SUPPLEMENTARY INFORMATION: In January 1985, the NOAA Administrator established a small Task Group to review and evaluate the effectiveness of the existing institutional structures, roles, and relationships and the fishery management planning and regulatory process under the Magnuson Act. The objective of the evaluation is to recommend actions necessary to improve the agency's management of the planning and regulatory process under the Magnuson Act. The Task Group has completed a draft discussion paper, based upon its review and evaluation, which is available for public comment. The Task Group is interested in providing all interested individuals and organizations the opportunity to review and comment on the draft discussion paper. All public comment will be considered by the Task Group in preparing its final paper.

Dated: January 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2068 Filed 1-29-86; 8:45 am]

BILLING CODE 3510-22-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 85-4 84CD]

1984 Cable Royalty Distribution

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Room 450, Washington, DC 20036, (202) 653-5175.

SUMMARY: In accordance with 17 U.S.C. 111(d)(5)(B), the Copyright Royalty Tribunal (Tribunal) directs that claimants to royalty fees paid by cable operators for secondary transmissions during 1984 shall submit not later than 5:00 p.m. on Monday, March 3, 1986 any comments concerning whether a

controversy exists with regard to the distribution of the 1984 royalty fees. Claimants shall, by the same time, advise the Tribunal of their views concerning partial distribution of the 1984 royalty funds, and their views concerning hearing schedules and procedures if the Tribunal determines that a controversy exists.

Dated: January 27, 1986.

Edward W. Ray,

Chairman.

[FR Doc. 86-2060 Filed 1-29-86; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology Subcommittee of the Air University Board of Visitors; Open Meeting

January 6, 1986.

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 16-19 March 1986 in Building 125, Wright-Patterson Air Force Base, Ohio. Meeting begins at 6:30 PM, 16 March 1986.

The purpose of the meeting is to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the Subcommittee will also be reported to the Commander, Air University, Maxwell Air Force Base, Alabama, at the next regularly scheduled meeting of the Air University Board of Visitors.

For futher information on this meeting, contact Major Rich Cote, Air Force Institute of Technology, Directorate of Educational Plans and Programs, Wright-Patterson Air Force Base, Ohio 45433-6583, telephone (513) 255-5760.

Patsy J. Conners,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1979 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors; Open Meeting

January 6, 1986.

The Air University Board of Visitors will hold an open meeting on 6-9 April 1986 at Maxwell Air Force Base, Alabama. Meeting begins at 6:30 PM, 6 April 1986 at the Maxwell Officers Club.

The purpose of this meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 293-5157.

Patsy J. Conners,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1980 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 22, 1986.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will meet March 18, 1986, from 8:00 a.m. to 4:30 p.m., and March 19, 1986 from 8:00 a.m. to 3:00 p.m., at ASD Headquarters, Building 14, Room 222 and 203, respectively, at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to receive briefings and to advise the commander on various programs of the Aeronautical Systems Division.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1976 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Direct Service Industry Options, Draft Environmental Impact Statement; Notice of Availability

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice is hereby given that the Bonneville Power Administration, in compliance with the National Environmental Policy Act of 1969 (NEPA), has prepared a draft environmental impact statement (EIS) entitled "Direct Service Industry Options."

SUMMARY: The EIS examines three potential actions (and alternatives) by which BPA hopes to reduce load fluctuations and revenue uncertainty resulting from its electrical service to 10 aluminum smelters. Options discussed include a variable power rate tied to the price of aluminum; a formal link between the Industrial Firm Power and the rate to the preference utilities; and partial BPA support for aluminum smelter modernization/conservation. BPA believes these actions, or combinations of them, will give BPA greater ability to plan for power needs and help to maintain its relatively strong financial position during this current period of power surplus, enhancing BPA's ability to repay the U.S. Treasury. In turn, BPA rates to its utility and other nonindustrial customers would stabilize.

Copies of the draft EIS are available for public review at major libraries in California, Idaho, Montana, Oregon, and Washington, and at locations listed below:

Reading Rooms:

Library, FOI—Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C.

Bonneville Power Administration, Washington, D.C. Office, Room 8G033, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C.

Additional Review Locations. The document may be inspected at the following BPA offices.

Mr. George Gwinnuttt, Area Manager, Suite 288, 1500 NE Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George Eskridge, District Manager, 800 Kensington, Missoula, Montana, 59801, 406-329-3860.

Mr. Ronald K. Rodewald, District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, Ext. 379.

Mr. George T. Reich, Acting Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. Frederick D. Rettenmund, District Manager, Federal Building, Room 376, 550 W. Fort Street, Boise, Idaho 83724, 208-334-9137.

Mr. Thomas Wagenhoffer, Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-552-6226.

Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

FOR FURTHER INFORMATION CONTACT: Requests for copies, questions, or comments regarding the EIS should be directed to Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208; phone 503-230-

5136. The comment period on the draft EIS ends February 21, 1986.

Issued in Portland, Oregon on January 22, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86-2032 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-24; OFP Case No. 64012-9295-24-24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises; Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Klondike Equity Enterprises, Inc.

SUMMARY: On January 7, 1986, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike VI facility in City of Industry, California from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR § 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, and absorption refrigeration package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to Southern California Edison Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within 6 months after the end of the period for public comment and hearing unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 17, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-86-24 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in City of Industry, California, which will (1) generate electrical power for sale to Southern California Edison Company and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a) (1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until

ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2104 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-25; OFP Case No. 64012-9295-25-24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Klondike Equity Enterprises, Inc.

SUMMARY: On January 7, 1986, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike VII facility in San Diego, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.)* ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas and Electric Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within 6 months after the end of the period for public comment and hearing unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 17, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-25 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SE., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in San Diego, California, which will (1) generate electrical power for sale to San Diego Gas and Electric Company and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption

would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2105 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration Final Consent Order With Marathon Petroleum Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Marathon Petroleum Company (Marathon) shall be made final as proposed. The consent order resolves, with certain exceptions, matters relating to Marathon's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. Marathon will pay to the DOE $20 million, plus interest from the date the proposed consent order was executed by DOE. Persons claiming to have been harmed by Marathon's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Marathon consent order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252-6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 28, 1985, ERA issued a notice announcing a proposed consent order between DOE and Marathon which, with certain exceptions, would resolve matters relating to Marathon's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 50 FR 34901 (August 28, 1985). The proposed order, which requires Marathon to pay 20 million,[1] is for the settlement of Marathon's potential liability for $13.5 million in alleged overcharges plus attributable interest. The August 28 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on September 30, 1985.

II. Comments Received

ERA received nine written comments. Three oral presentations were given at the September 30, 1985 hearing. All written and oral comments were considered in making the decision as to whether or not the proposed consent order should be made final.

The written and oral comments can be divided into four subject categories. One category consists of one comment that addressed the Office of Hearings and Appeals' ultimate disposition of the Marathon settlement funds. The second category includes three comments which addressed the use of OHA Subpart V procedures to distribute the settlement monies. The third category consists of four comments which addressed certain consent order provisions. The last category contains one comment directed at the adequacy of the settlement amount.

One comment was received from the following group which expressed its views on OHA's ultimate disposition of the funds that Marathon is to pay pursuant to the settlement:

State of Indiana.

Comments addressing the use of Subpart V procedures for distribution of the settlement fund were submitted by the following three groups:

Ad Hoc Committee of Marathon Customers, Attorney General of the States of Askansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia, National Council of Farmer Cooperatives.

The four comments that addressed certain consent order provisions were received from: Congressmen Robert H. Michel, Edward R. Madigan and Thomas J. Tauke, Growmark, Inc., Petroleum Marketers Association, Research Fuels, Inc.

The comments submitted by these parties did not question the basis of the settlement or adequacy of the settlement amount, but only offered suggestions on the distribution of the settlement funds that were different from the consent order provisions requiring disbursement through OHA administrative claims proceedings or suggested clarification of various aspects of the proposed consent order.

The one comment that addressed the adequacy of the proposed settlement amount was submitted by: Attorneys General of the States of Michigan and Indiana.

III. Analysis of Comments

The August 28 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the August 28 notice provided detailed information regarding Marathon's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The State of Indiana's comment relating to OHA's ultimate distribution of the funds if the Marathon consent order is finalized was not germane to the basis or adequacy of the settlement. The distribution of the settlement funds will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals, to be initiated shortly after publication of this notice. Comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the Marathon consent order claims proceeding.

[1] The $20 million, plus interest accrued from the date the proposed consent order was executed by DOE, will be disbursed to DOE within 30 days of publication of this Notice.

Several commenters objected to the provision in the consent order that requires the DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement fund. Two of these groups expressed the view that use of the Subpart V procedure was unnecessary and that the consent order itself should direct refunds to parties who may have been overcharged. The ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Marathon, where ERA could not readily identify the injured parties or their relative amount of economic harm. These commenters may most appropriately present their claim for monies from the consent order fund in that forum.

Another commenter in this group, the National Counsel of Farmer Cooperatives ("Cooperatives"), while supporting the disbursement of settlement funds attributable to refined products through OHA's Subpart V procedures, objected to referral of the crude oil portion of the consent order fund to OHA, rather than directing it through the consent order, in light of the DOE Statement of Restitutionary Policy issued on June 21, 1985. 50 FR 27400 (July 2, 1985) (Policy Statement). The Policy Statement was based upon the findings of fact contained in the June 19, 1985, report of the Office of Hearings and Appeals to the Kansas district court in *In re: the Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, in which OHA found that it was impossible to trace specific crude oil overcharges through an individual refiner's marketing system to the ultimate consumer. In the Policy Statement, DOE announced that crude oil overcharge funds that had been spread through the entitlements program would be placed in an escrow account to allow Congress to decide upon an appropriate form of indirect restitution. If, by the fall of 1986, Congress does not act, the DOE intends to pay the money to the general fund of the U.S. Treasury for the benefit of the American public. In the Federal Register notice containing the policy statement, OHA announced that it planned to apply that policy to Subpart V proceedings involving overcharge funds representing entitlements period crude oil miscertification violations.

The DOE believes that referral of the entire Marathon settlement fund to OHA is entirely appropriate. While it would be possible for ERA to apply the Policy Statement directly by itself holding in escrow the funds attributable to the crude oil portion of the Marathon consent order, ERA believes that filing a Subpart V petition with respect to the entire Marathon settlement will avoid needless duplication and allow the OHA, the part of the Department with the broadest experience in administering overcharge and settlement funds, to do so in this case. This is especially appropriate in a consent order case, where there is no specific allocation of the settlement amount to crude oil or refined product.

The next group of comments addressed various aspects of the proposed consent order and suggested clarifications which should be made. Research Fuels, Inc. ("RFI") noted that while the proposed consent order resolves all matters relating to Marathon's compliance with the petroleum price and allocation regulations, it does not assign any monetary value to possible violations of the allocation regulations. RFI proposes that in the OHA Subpart V proceeding it be allowed to seek restitution from the remainder of the $20 million fund after refunds are paid to direct applicants whom OHA finds may have been overcharged in purchases of crude oil or refined petroleum products. DOE wishes to make clear that the apportionment of money in the the proposed consent order (and in the **Federal Register** notice)[2] to Marathon's alleged violations of the refiner pricing and crude oil regulations does not determine the ultimate distribution of this money. That is a matter which will be decided by OHA in a separate proceeding under Subpart V. RFI is free to press its arguments that it is entitled to refunds for Marathon's possible violations of the allocation regulations during that proceeding.

Another commenter in this group questioned whether the definition of Marathon in paragraph 203 of the consent order included certain companies controlled by Marathon and also suggested that the record retention provision of paragraph 601 should require Marathon to retain the data until the conclusion of the Subpart V proceeding and to provide that data to claimants which requested it. The definition of Marathon in the consent order is very broad and includes the company, its parent and subsidiaries, affiliates, and predecessors and Marathon in certain of its petroleum related activities. If the companies in question properly belong in one of these categories, they are covered by the consent order. The record retention provision of the consent order allows the OHA to require Marathon to retain the specified data as long as OHA needs it and to make the data available to OHA upon request. This language allows for the complete conduct of a Subpart V proceeding in a flexible manner while not burdening the company with unnecessary record retention or record provision requirements.

Two other commenters, Growmark, Inc. and Congressmen Michel, Madigan and Tauke, addressed the exclusion of the Growmark class of purchaser litigation, presently before OHA, from the settlement. These commenters expressed concern that DOE's settlement of matters concerning Marathon's cost banks and retention of records in all other proceedings would have an impact on the remedial portion of the Growmark litiation. The commenters explained that the settlement might encourage Marathon to object to the remedy proposed by ERA in the Growmark proceeding—a refund based upon the difference between the price of petroleum products Marathon actually charged Growmark on May 15, 1973 and the price it should have charged Growmark on that date, multiplied by the gallons of product sold to Growmark. Instead, the commenters believe that Marathon might now seek to have OHA apply the deemed recovery rule—Marathon would be deemed to have recovered the same product and non-product cost increments from its other customers that it recovered from Growmark—a remedy the commenters feel would have had substantial impact on Marathon's banks prior to settlement but would have limited consequence after the settlement, especially if Marathon is allowed to destroy records relating matters settled by the consent order. The commenters propose that the consent order should be renegotiated to include a provision binding Marathon to a computation of damages that accords with the method argued by ERA in the Growmark litigation, or that the proposed consent order should be rejected.

The DOE believes the proposed consent order as it is presently structured is in the best interest of the public while fully protecting the Growmark litigation. The consent order clearly states DOE's intention that the Marathon settlement does not affect issues or claims arising from or pending in the Growmark case, and Marathon is bound by that language as well. ¶ 501(a). That specific language is not affected by

[2] Another commenter raised a similar concern with respect to the language in the August 28 **Federal Register** notice.

the more general consent order language in paragraph 501 which resolves all other matters between DOE and Marathon. Thus, if Marathon sought to have the deemed recovery rule applied to compute its liability in the OHA proceeding, the ERA would be free to apply that methodology as though the consent order did not exist. Were Marathon to destroy any records relevant to those calculations, the issue of application of the deemed recovery rule would become moot. Therefore, because the Growmark litigation is fully preserved by the consent order, renegotiation or rejection of the proposed settlement would neither be useful nor beneficial to the public.

On December 1, 1985, ERA received a letter from Growmark expressing the company's most recent views on the proposed Marathon consent order in light of an OHA discovery order issued to Marathon on November 14, 1985.[3] Growmark stated its concern that since OHA preliminarily determined that Marathon placed Growmark in the proper class of purchaser—the wholesale reseller class—and that the legal theory advanced by ERA in the Growmark litigation could not be sustained, exclusion of the Growmark litigation from the consent order might no longer be appropriate. Growmark suggested that in the event OHA issues a final order to this effect, ERA renegotiate the consent order to include the Growmark litigation and take into account any overcharges to Growmark. Growmark also expressed the view that since the OHA discovery order preliminarily indicated that ERA should recalculate Marathon's May 15, 1973 prices to its wholesale reseller class to include transactions with Growmark, the maximum amount Marathon could have overcharged that class, and perhaps even the basis for deeming recoveries, could change. Growmark, therefore, requested that the proposed consent order be withdrawn or at least not finalized until after oral argument on the validity of OHA's preliminary legal determinations, scheduled for January 28, 1986.

After analyzing Growmark's letter, ERA has determined that finalization of the proposed consent order would be in the best interest of the public. The existence of a discovery order containing preliminary legal conclusions does not affect the bargained-for agreement between Marathon and DOE since, as previously discussed, the Growmark litigation is entirely excluded from coverage under the consent order. Thus, DOE did not get and Marathon did not give up anything for this litigation which would be affected by any final OHA order. Furthermore, it is unlikely that there will be a final OHA determination requiring a recalculation of Marathon's May 15, 1973 prices to its wholesale reseller class of purchaser to include the prices Marathon charged Growmark since the DOE has no evidence of any transaction between Marathon and Growmark at each terminal on (or most recently prior to) that date, while transactions between Marathon and other members of the class did occur. See Ruling 1979–1. thus, whatever the final outcome of the Growmark litigation, it is unlikely to result in a need to determine new base prices for the wholesale reseller class.

The final commenter, the Attorneys General of the States of Michigan and Indiana ("Michigan and Indiana"), was the only one which addressed the adequacy of the settlement amount. Michigan and Indiana questioned the appropriateness of considering Marathon's banks in calculating the overcharge liability resulting from the alleged violations and incorporated by reference the comments filed previously by the Controller of the State of California in the ARCO consent order proceeding.

As DOE has previously explained in the ARCO **Federal Register** notice, 50 FR 26603 (June 24, 1985), in response to the same argument, there is a difference between the DOE's method of assessing regulatory compliance and resulting potential overcharge liability as outlined in the August 28 notice and the analysis sometimes used in Subpart V proceedings by OHA for determining the extent to which overcharges were absorbed by the first purchaser. Indiana and Michigan seem to assume that these two analytical processes should be the same. The two approaches are not the same. In fact, the processes must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed. In these proceedings, refiners making claims particularly have urged OHA to consider their "banks" of unrecouped costs as evidence conclusively demonstrating that they were injured by the full measure of overcharges they incurred. OHA has consistently maintained that the absence of banks simply shows that all cost increases by a firm (whether lawful or consisting of overcharges) were passed on, and that the mere presence of banks means that only some cost increases (whether lawful or whether the result of overcharges) were not recovered as calculated under the regulatory scheme. In a number of cases OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity. Accordingly, in the context of a proceeding conducted to make an equitable distribution of refunds, the mere fact that a refiners' banks exceeded the amount it was overcharged would not demonstrate the extent, if any, to which the refiner had been harmed.

OHA performs this analysis of banks and cost passthroughs in an effort to assure that first purchasers who are not end-users do not reap the benefits of consent orders at the expense of other persons who are economically injured further along in the distribution chain. In fact, if the mere existence of banks were proof that overcharges had been absorbed, each firm in the distribution chain that had such banks could each assert that they had absorbed the same overcharges.[4]

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge liability in the context of the refiner pricing regulations which were in effect during the period of price controls. From an enforcement standpoint the principal question is the degree to which overcharges were committed by the seller, not the distribution of that harm throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

In the August 28 **Federal Register** notice, ERA sought to provide the maximum amount of information possible, and to address Marathon's actual financial liability resolved by the proposed consent order and to explain the difference between "overcharges" and "cost violations." A review of the scope of disclosure in the August 28 notice and the fact that only one

[3] ERA has determined it will treat this letter as a late-filed comment on the proposed consent order.

[4] The States also suggest that a recent decision, *Atlantic Richfield Co.* v. *DOE*, C.A. Nos. 84–190/84–735 (D. Del. Sept. 25, 1985), might encourage ERA to agree with the States. The ARCO case referred to was a challenge to an OHA Subpart V Decision and Order which refused, among other things, to consider the existence of ARCO's banks alone as conclusive evidence that ARCO had absorbed overcharges. The Delaware district court, in upholding the OHA Decision and Order, found OHA's requirement that ARCO provide proof of nonpassthrough of overcharges to be entirely reasonable in the context of Subpart V proceedings, as distinguished from enforcement proceedings. This decision simply reaffirms the position taken by OHA in numerous Subpart V proceedings, as discussed above.

commenter in any way addressed the adequacy of the settlement amount has resulted in ERA's belief that the August 28 notice provided the public with sufficient information to assess its adequacy. Therefore, the ERA will not repeat its explaination concerning the basis for the settlement, but will refer any member of the public who is interested in that matter to the August 28 Federal Register notice, which contains a thorough discussion.

The review and analysis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed consent order with Marathon. Accordingly, ERA concludes that the consent order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between Marathon and DOE executed on June 6, 1985 is made a final order of the Department of Energy, effective the date of publication of this notice in the Federal Register.

Issued in Washington, D.C. on January 24, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-2050 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-02-NG]

Carson Water Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 10, 1986, of an application filed by Carson Water Company (Carson) a wholly-owned subsidiary of Southwest Gas Corporation, for blanket authorization to import up to 100 Bcf per year up to a total of 200 Bcf of natural gas over a two-year period beginning on the date of first delivery. Carson would import the natural gas for sale in the spot and short-term market, either for its own account, or on behalf of U.S. purchaser customers or Canadian producer-marketer suppliers. The price charged to customers for the imported gas would be market-based with the producer price calculated on a net-back basis. Carson proposed to file quarterly reports with the ERA givng the specific terms of each import and sale, including the price and volumes.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to invervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 3, 1986).

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-8116.

Diana Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984).

Parties that may oppose this application should comment in their responses on the issue of the competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. March 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervening may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Carson's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 23, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86-2051 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. C&E-85-021; OFP Case No. 64011-3194-01-12]

LTV Steel Co., Inc.; Order Granting Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to LTV Steel Company, Inc. Exemption from the Prohibition of the Powerplant and Industrial Fuel Use Act of 1978 and Rescission of an Order Granting a Permanent Fuel Mixtures Exemption for the Same Facility.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to LTV Steel Company, Inc. (LTV or "the petitioner"), succesor by merger to Jones and Laughlin Steel, Inc. (J&L). The permanent exemption permits the use of natural gas as the primary energy source for a boiler located at its Aliquippa Works in Aliquippa, Pennsylvania, based on the lack of alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on March 31, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585. Phone (202) 252-1774.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585. Phone (202) 252-6985.

SUPPLEMENTARY INFORMATION: On May 15, 1985, LTV petitioned ERA under section 212 of FUA and 10 CFR 503.32(c) for a permanent exemption to permit the use of natural gas in an existing boiler. The petition for exemption based on the lack of an alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually was filed simultaneously with a request that ERA, pursuant to 10 CFR 501.000 *et seq.*, rescind a Permanent 25 percent Fuel Mixtures Exemption previously granted by ERA to J&L on November 20, 1981 applicable to the same boiler.[1] Since ERA is granting the petition pursuant to 10 CFR 503.32(c), the Rescission Order will be effective contemporaneously. The project for which the exemption is requested is a boiler located at LTV's Aliquippa Works. The unit, which is already in place, is designated as Boiler No. 61, and will burn natural gas.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR § 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 13, 1985 (50 FR 37399), commencing a 45-day public comment period. In that notice, ERA announced its intent to rescind the Fuels Mixture Exemption for Boiler #61, contingent on granting LTV's petition for a 1,500 hour full load exemption.

A copy of the petition was provided to the Enviornmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on October 28, 1985; no comments were received and no hearing was requested.

Rescission Request

ERA hereby grants LTV's request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 61. LTV's request for rescission was based on its determination that significantly changed circumstances as defined in 10 CFR § 501.102(b) exist with respect to the applicability of the Fuel Mixtures Exemption to LTV. Accordingly, pursuant to 10 CFR § 501.101(f), LTV submitted documentation supporting its Request for Rescission. It was originally anticipated that operation of Boiler No. 61, a given steaming capacity would be necessary at various times to meet the then anticipated demand at the plant. However, subsequent to commencement of commercial operations, LTV has determined that the plant would be operated more efficiently if Boiler No. 61 were permitted to operate with a 1500 hour full load exemption.

[1] OFP Case No. 55368-3194-01-12, 46 FR 57110 (November 20, 1981).

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(c), LTV has certified that:

1. The unit will be operated less than 1500 full load hours annually;
2. The use of mixtures is not feasible, as required under § 503.9; and
3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, LTV submitted and certified as accurate the information required by the environmental checklist in § 503.13(b)(2).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that LTV has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(c). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to LTV to permit the use of natural gas as the primary energy source for a 1500 hour full load equivalent exemption for Boiler No. 61 at its Aliquippa Works, Aliquippa, Pennsylvania.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on January 23, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86-2052 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-04; 85-OFP Case No. 66017-9266-01-23]

Powerplant and Industrial Fuel Use; Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of extension of decision period on petition for exemption by Power Developers, Inc. for a Proposed Facility near Scottsdale, Arizona.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days of April 21, 1986, the Decision Period within which to either grant or deny the request for a

permanent exemption from the prohibitions to Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) (FUA) filed by Power Developers, Inc. for its proposed electric power production facility to be near and east of Scottsdale, Arizona.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a specified date by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary to allow further consultation with the Federal Energy Regulatory Commission as required by the FUA.

Issued in Washington, DC on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2106 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; O.K. Oil and Gas, Inc. and Jack D. Pointer, Jr.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to O.K. Oil and Gas, Inc. and Jack D. Pointer, Jr.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Proposed Remedial Order which was issued to: O.K. Oil and Gas, Inc. (O.K.) and Jack D. Pointer, Jr. (Pointer) 800 S. I-35, Suite 106, Oklahoma City, Oklahoma 73149.

This Proposed Remedial Order alleges that O.K. and Pointer charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR 212.79 during the period June 1979 through December 1980 in the amount of $261,495.84, plus interest. A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the: Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585; in accordance with the provisions of 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon the person to whom the Proposed Remedial Order is directed; upon:

Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, 2d Floor, Dallas, Texas 75207;

and upon:

Carl A. Corrallo, Esquire, Chief Counsel for Administration Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-15, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on the 17 day of January, 1986.

James Solit,

Acting Director of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 86-2053 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $568,000 obtained by the DOE as the result of a lawsuit involving Juniper Petroleum Corporation concerning that firm's treatment of certain crude oil as stripper well crude oil. This money is being held in escrow for disposition in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985).

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2094.

SUPPLMENTARY INFORMATION: In accordance with section 205.283(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to funds obtained as a result of a judgment entered by the United States District Court for the District of Delaware in *Juniper Petroleum Corporation* v. *DOE*, No. 80-617 (D. Del.). In that lawsuit, Juniper challenged the DOE regulations governing the sale of crude oil produced from "stripper well properties." In upholding the DOE regulations, the court ordered Juniper to pay to the Department an amount equal to the difference between the ceiling price for "old" oil and the stripper well price for each barrel of crude oil at issue in the lawsuit, plus interest on that amount. The amount refunded was to be distributed in a Subpart V proceeding.

The Decision and Order establishes procedures under which no claims for direct restitution will be accepted, in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985). The *Juniper* funds will therefore be held in escrow for disposition in accordance with departmental policies.

Dated: January 21, 1986.

George B Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy Special Refund Procedures

January 21, 1986.

Name of Firm: Juniper Petroleum Corporation.

Date of Filing: April 12, 1985.

Case Number: HEF-0579.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received from enforcement proceedings designed to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a court order involving Juniper Petroleum Corporation. Pursuant to the court order, the firm was required to make refunds totaling approximately $568,000 in principal and interest for actual violations of the DOE pricing and certification regulations. Those funds are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

Background

In 1980, Juniper filed a lawsuit against the Department of Energy challenging

the DOE regulations governing the sale of crude oil produced from "stripper well properties." *Juniper Petroleum Corporation v. DOE*, No. 80-617 (D. Del.). Juniper's suit was stayed pending the outcome of related multidistrict litigation challenging the stripper well regulations. However, when the Temporary Emergency Court of Appeals upheld the regulations, *In re: The Department of Energy Stripper Well Exemption Litigation*, 690, f.2d 1375 (Temp. Emer. Ct. App. 1982), *cert. denied*, 103 S. Ct. 763 (1983), the United States District Court for the District of Delaware entered judgment for the DOE in the *Juniper* proceeding. It therefore ordered Juniper to pay to the Department an amount equal to the difference between the ceiling price for "old" oil and the stripper well price for each barrel of crude oil at issue in the lawsuit, plus interest on that amount. The amount refunded was to be distributed in a Subpart V proceeding.

On May 28, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that Juniper had paid to the DOE. 50 FR 26615 (June 27, 1985). In that proposed decision, we noted that as a producer of crude oil, Juniper was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212,[1] including the crude oil certification requirements contained in 10 CFR 212.131(a)(4). To the extent that Juniper miscertified old crude oil as stripper well crude oil, the impact of the violations was spread to all participants in the Entitlements Program. As we noted in the Proposed Decision and Order, it is probable that over the long run at least some part of these cost increases were passed through to the consuming public in the form of higher prices. At the time the Proposed Decision was issued, we were actively considering whether the impact of identical stripper well miscertification violations could be traced with precision. We noted in the PD&O that we anticipated adopting a refund procedure in the *Juniper* proceeding which was consistent with that recommended to the District Court in the Stripper Well Exemption Litigation.

A. The OHA Stripper Well Report

After the PD&O was issued, the OHA completed its fact-finding in the *Stripper Well* proceeding. *See Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). In its report, the OHA discussed at length the general effect of crude oil miscertifications on the Entitlements Program. *Id.* at 90,260. The OHA noted that the Entitlements Program dispersed the stripper well overcharges at issue in that case equally among all barrels of crude oil refined in the United States. Thus, each refiner *initially* bore that part of the overcharges which was proportional to its pro rata share of the crude oil runs to stills covered by the Program in a given month. *Id.* at 90,621. Although the OHA Stripper Well Report fund, using marginal econometric analysis, that refiners *as a class* absorbed a small percentage of the overcharges that were spread by the Entitlements Program, it also concluded that it is impossible to trace the specific impact on individual refiners of Entitlements-period crude oil miscertification violations. *Id.* at 90,620.

B. DOE Policy Regarding Crude Oil Overcharges

The findings in the OHA Stripper Well Report formed the basis for DOE's establishment of a restitutionary policy regarding overcharge funds associated with Entitlements-period crude oil miscertifications. 50 FR 27400 (1985), Fed Energy Guidelines ¶90,508 (1985). The policy statement announced that the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution. In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). It also solicited comments from potentially aggrieved parties. Comments opposing the OHA's application of the policy to pending refund proceedings were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

Refund Procedures

We have reviewed comments filed on behalf of the States of Texas, California, Arkansas, Delaware, Iowa, Louisiana, North Kakota, Rhode Island, and West Virginia which argue that restitution for crude oil overcharges is best effected through distribution of funds to the States for use in energy-related programs. However, in view of OHA's decision in *Amber Refining*, we have determined that the *Juniper* funds should be pooled with other crude oil consent order funds and judgments resulting from litigation for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

It is therefore ordered that:

The refund amount provided in conjunction with the court's order in *Juniper Petroleum Corporation* v. *DOE*, Civil Action No. 80-617 (D. Del.) shall be distributed in the manner set forth in the foregoing Decision and Order.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2054 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[1] The DOE regulations, in effect until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain other crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil included in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Entitlements Program. 10 CFR 211.67.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding approximately $1,912,000 obtained by the DOE as the result of settlement agreements involving Brownlie, Wallace, Armstrong & Bander, Inc. (Case No. HEF-0564) and Cordele Operating Company (Case No. HEF-0565) and from the issuance of a Remedial Order to H. H. Gungoll & Associates on April 5, 1984 (Case No. HEF-0572). In each case, audits of the firm revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to first sales of domestic crude oil. The money is being held in escrow for disposition in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985).

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the

procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to funds obtained as a result of consent orders involving Brownlie, Wallace, Armstrong & Bander, Inc. and Cordele Operating Company. It also relates to funds obtained by the DOE as a result of a Remedial Order issued on April 5, 1984 to H. H. Gungoll & Associates.

The Decision and Order establishes procedures under which no claims for direct restitution will be accepted, in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985). The funds received from the three firms will therefore be held in escrow for disposition in accordance with departmental policies.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 21, 1986.

Names of Firms: Brownlie, Wallace, Armstrong and Bander, Inc., Cordele Operating Company, H.H. Gungoll & Associates.

Dates of Filing: February 26, 1985. February 26, 1985. March 18, 1985.

Case Numbers: HEF–0564. HEF–0565. HEF–0572.

The procedural regulations of the Department of Energy permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement a process to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with remedial orders or consent orders involving Brownlie, Wallace, Armstrong & Bander, Inc. (BWAB) and the firms listed above.[1] Pursuant to these orders, the firms were either required or agreed to make refunds totaling approximately $1,912,000 for actual violations or to settle alleged violations of the DOE pricing regulations. Those funds, at least some portion of which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

Background

As part of its enforcement activities, the DOE and its predecessor agencies conducted audits of BWAB, Cordele Operating Company, and H.H. Gungoll & Associates. Those investigations revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to first sales of domestic crude oil. The types of violations involved in cases concerning producers of crude oil for the most part fall into two general categories. The first type of violation commonly referred to as a "miscertification" involves sales of crude oil at the wrong regulatory price "tier." The second general category of violation involves sales of crude oil at the wrong "ceiling price" for crude oil of a given tier. Both types of alleged crude oil producer violations are involved in the present cases. For example, in the course of remedial order proceedings, H.H. Gungoll & Associates was found to have miscertified price-controlled crude oil produced from its Van Deventer Quarter property during the period January 1, 1975 through December 31, 1976, and to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the ceiling price permitted for "old" oil. Cordele Operating Company allegedly sold crude oil at prices in excess of the applicable ceiling price in violation of 10 CFR Part 212, Subpart D and predecessor regulations during the entire period of federal crude oil price controls. Similarly, BWAB was alleged to have miscertified crude oil procedure from its Burlington Northern 11–21 property during the period January 1, 1979 through January 27, 1981. In order to remedy the effects of the alleged or actual violations, the firms paid into escrow funds for distribution to injured parties.

On April 4, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that the three firms had paid to the DOE. 40 FR 14429 (April 12, 1985). In that proposed decision, we noted that as producers of crude oil, the firms were subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[2] To the extent that the firms miscertified old crude oil as new or stripper well crude oil, the impact of the violations was spread to all participants in the Entitlements Program. Thus, it is probably that over the long run at least some part of these costs increases were passed through to the consuming public in the form of higher prices.

In the Proposed Decision, we announced our intention to implement refund procedures modeled on those outlined in *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984); *Office of Enforcement*, (DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Adams*). Specifically, we proposed to require an applicant to demonstrate that it was *injured* by the alleged or actual overcharges. At the time the Proposed Decision was issued, however, we were actively considering in the context of the *Stripper Well Litigation* proceeding whether the impact of similar crude oil miscertification violations could be traced. Because of our findings in that case, and subsequent developments in DOE's policy regarding refunds in crude oil overcharge cases, we have determined that it is appropriate to revise the refund procedures which had been previously proposed in this case.

A. The OHA Stripper Well Report

After the PD&O was issued, the OHA completed its fact-finding in the *Stripper Well* proceeding. *See Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). In its report, the OHA discussed at length the general effect of crude oil miscertifications on the Entitlements Program. *Id.* at 90,620. The OHA noted that the Entitlements Program dispersed the stripper well overcharges at issue in that case equally among all barrels of crude oil refined in the United States. Thus, each refiner *initially* bore that part of the overcharges which was proportional to its pro rata share of the crude oil runs to stills covered by the Program in a given month. *Id.* at 90,621. Although the OHA Stripper Well Report found, using marginal econometric analysis, that

[1] The OHA determined in its April 4, 1985 Proposed Decision and Order in this proceeding that the prerequisites to its acceptance of jurisdiction has been satisfied.

[2] The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain other crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil included in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

refiners *as a class* absorbed a small percentage of the overcharges that were spread by the Entitlements Program, it also concluded that it is impossible to trace the specific impact on individual refiners of Entitlements-period crude oil miscertification violations. *Id.* at 90,620.

B. DOE Policy Regarding Crude Oil Overcharges

The findings in the OHA Stripper Well Report formed the basis for DOE's establishment of a restitutionary policy regarding overcharge funds associated with Entitlements-period crude oil miscertifications whose impact was spread through the Entitlements Program. 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985). The policy statement announced that the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution. In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). It also solicited comments from potentially aggrieved parties. Comments opposing the OHA's application of the policy to pending refund proceedings were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

Refund Procedures

We have reviewed comments filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia which argue that restitution for crude oil overcharges is best effected through distribution of funds to the States for use in energy-related programs. However, in view of OHA's decision in *Amber Refining*, we have determined that the funds obtained from BWAB, Cordele Operating Company, and H.H. Gungoll & Associates should be pooled with other crude oil consent order funds and judgments resulting from litigation for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

It is therefore ordered that:

(1) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Brownlie, Wallace, Armstrong & Bander, Inc. on August 28, 1984 shall be distributed in the manner set forth in the foregoing Decision and Order.

(2) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Cordele Operating Company on May 31, 1984 shall be distributed in the manner set forth in the foregoing Decision and Order.

(3) The refund amount provided in conjunction with the Remedial Order issued to H.H. Gungoll & Associates on April 5, 1984 shall be distributed in the manner set forth in the foregoing Decision and order.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2055 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,041,462.73 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Crystal Oil Company (Case No. HEF-0204), located in Shreveport, Louisiana. The funds will be available to customers that purchased refined petroleum products from Crystal during the period August 19, 1973 through December 31, 1975.

DATE AND ADDRESS: Applications for refund of a portion of the Crystal consent order funds must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Crystal Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-2004.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a consent order entered into by Crystal Oil Company (Crystal) of Shreveport, Louisiana, which settled possible pricing violations with respect to the firm's sales of refined petroleum products during the period August 19, 1973 through December 31, 1975. Under the terms of the consent order, $1,041,462.73 has been remitted by Crystal and is being held in an interest-earning escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of the Crystal consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by Crystal was issued on May 2, 1985. 50 FR 20002 (May 13, 1985).

The Decision and Order published with this Notice reflects an analysis of comments received from interested parties. As the Decision indicates, applications for refunds from the Crystal consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased refined petroleum products from Crystal during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 21, 1986.

Name of Firm: Crystal Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0204.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with Crystal Oil Company

(Crystal). The Petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

Crystal is a "refiner" of "crude oil" as those terms were defined at 10 CFR 212.31, and is headquartered in Shreveport, Louisiana.[1] The firm was subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart E until January 28, 1981, when refined petroleum products were exempted from price and allocation controls. Exec. Order 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Crystal revealed possible pricing violations in Crystal's sales of refined petroleum products. In order to settle all claims and disputes between the ERA and the firm with respect to its sales of refined petroleum products during the period August 19, 1973 through December 31, 1975 (the consent order period), Crystal and the DOE entered into a Consent Order effective March 9, 1981.[2] Pursuant to that Consent Order, Crystal remitted to the DOE $1,041,462.73 to be deposited into an interest-bearing escrow account for ultimate distribution by the DOE.[3] In addition, under the terms of the Crystal Consent Order, the firm reduced its "bank" of unrecouped increased costs allocable to motor gasoline by $5 million. By its terms, the Crystal Consent Order constitutes neither an admission by Crystal nor a finding by the DOE that Crystal violated the price regulations during the consent order period. This Decision and Order concerns the distribution of the $1,041,462.73 consent order amount plus accrued interest.

On May 2, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Crystal's alleged regulatory violations. *See Crystal Oil Co.*, 6 Fed. Energy Guildelines ¶ 90,065 (Proposed Decison, May 2, 1985).[4] In the PDO, we described a two-stage process for distribution of the Crystal consent order funds. Specifically, we proposed to distribute funds in the first stage to claimants who could demonstrate that they were injured by Crystal's alleged overcharges during the consent order period. We further stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process.

The purpose of this Decision and Order is to establish the final procedures to be used for filing and processing claims in the first stage of the Crystal refund proceeding. This Decision sets forth the information that a purchaser of refined petroleum products from Crystal should submit in order to establish eligibility for a portion of the consent order fund. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO.[5] We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶82,508 (1981) (*Coline*). It would therefore be premature for us to address issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

We have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Crystal consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Determination of Injury and Refund Amounts

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers and refiners acting in the capacity of resellers) of refined petroleum products, and (ii) firms, individuals, or organizations that were consumers of those products. The refined petroleum products must have been purchased either directly from Crystal or in a chain of distribution leading back to Crystal.[6] As explained below, the consent order funds will be distributed to eligible claimants who demonstrate that they were injured by Crystal's alleged overcharges.

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased petroleum products from Crystal, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they had "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶85,029 at 88,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron, Inc.*, 10 DOE ¶85,014 (1982).

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[1] During the period covered by the Crystal Consent Order, the firm also had marketing operations in Arkansas, Texas, Indiana, Ohio, Michigan, Florida, Mississippi, Alabama, and Georgia.

[2] The Crystal Consent Order does not specify that it is limited to sales of refined petroleum products and Crystal apparently sold some crude oil during the consent order period. However, we have concluded that this special refund proceeding should be limited to refined products in light of the fact that Crystal in 1976 entered into a separate consent order that specifically covered crude oil sales. In fact, the Federal Register notice of the proposed Crystal Consent Order that is the subject of this proceeding referred only to sales of refined petroleum products. 46 FR 5050 (January 19, 1981).

[3] In the Consent Order, Crystal agreed to place $1 million into private escrow account when that Order was signed. The $1,041,462.73 amount includes interest accrued on that account prior to its remission to the DOE when the Consent Order became effective.

[4] The Crystal PDO also proposed refund procedures to distribute funds received as the result of two other consent orders. Because the number of claims likely to be received in each of the three proceedings is relatively large, we have decided in the interest of clarity to finalize refund procedures separately for each consent order fund.

[5] We received comments concerning our first-stage proposal from one potential first-stage claimant and from the State of Texas. In addition, comments concerning second-stage procedures were filed by Texas as well as the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[6] Claimants may have purchased from a number of Crystal subsidiaries. Those subsidiaries are: Mercury Discount Co., Berry Petroleum Corp., Tulsa Oil Corp., Crystal Petroleum Co., Inc., Eastern Petroleum Co., Longview Refining Co., Adobe Refining Co., Stone's Independent Oil, Inc., Stone's Independent Oil Distributors, Inc., Triangle Oil Co., Joe E. Hutchison Distributing Co., Hi-Octane Terminal Co., Panhandle Towing Co., and Crystal-Princeton.

Several of these subsidiaries were acquired by Crystal during the consent order period. Specifically, the Longview Refining Co. was acquired in October 1973, the Adobe Refining Co. in November 1973, and Crystal-Princeton in December 1973. Refunds based on purchases from these Crystal subsidiaries will only be available for purchases occurring after those acquisition dates.

1. Small Claims Presumption

As we proposed in the PDO, we intend to adopt a presumption of injury for small claims under which resellers whose claims do not exceed a threshold amount will be presumed to have absorbed any overcharges and will be exempt from the general requirement that resellers make a detailed demonstration that they did not pass through to their own customers the increased costs associated with the alleged covercharges.

The State of Texas filed comments in opposition to our proposed presumption of injury for small claims. We have considered and rejected similar comments from Texas in many prior proceedings. *See, e.g., Blaylock Oil Co.*, 13 DOE ¶85,223 (1985). The DOE procedural regulations expressly permit the use of presumptions in refund proceedings precisely because of the problems inherent in reconstructing pricing practices during past periods. *See* 10 CFR § 205.282(e) and *Office of Special Counsel*, 10 DOE ¶85,048 at 88,207 (1982). As we stated in the PDO, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of the alleged overcharges, some of which in this case may have taken place nearly thirteen years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficiently. We therefore reject Texas' contention that it would be inappropriate to adopt a presumption of injury for small claims.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[7] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

2. Volumetric Presumption

In the PDO, we also proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of Crystal's sales during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. We have received no comments in opposition to it, and we shall adopt the volumetric presumption in this proceeding. To determine the per gallon volumetric factor in the instant proceeding, the $1,041,462.73 consent order amount will be divided by the total volume of refined petroleum products sold by Crystal during the consent order period. This results in a volumetric amount of $0.00121 per gallon ($1,041,462.73 divided by 858,727,230 gallons of refined petroleum products). Refunds will be calculated by multiplying the volumetric factor by the total amount of refined petroleum products that an applicant purchased from Crystal. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

3. End-users

In addition to the presumptions were are adopting in this proceeding, we are adopting our proposed finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled by the Crystal Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of refined petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of refined petroleum products covered by the Crystal Consent Order need only document their purchase volumes from Crystal in order to make a sufficient showing that they were injured by the alleged overcharges.[8]

C. Minimum Refund

Finally, we shall establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85, 225; *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

Having considered the comments received concerning the first-stage procedures tentatively adopted in our May 2, 1985 Proposed Decision, we have concluded that applications for refund should now be accepted from parties who purchased refined petroleum products from Crystal during the consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Crystal Oil Company Consent Order Fund, Case No. HEF–0204.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is believed to be privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the

[7] Resellers that were spot purchasers from Crystal will be ineligible to receive any refunds, even refunds below the threshold level, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser generally would not have made spot market purchases at increased prices unless it was able to pass through to its customers the full amount of those prices. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[8] Even though they operate as resellers, cooperatives will be excused from the requirement that they make a detailed showing of injury with respect to that portion of their purchases that was resold to their members, since any refunds received by cooperatives will inure to the benefit of their customers, who typically are also their member-owners. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982).

name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Crystal Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Crystal consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should report its purchase volumes of refined petroleum products from Crystal for each month of the period it is claiming that it was injured by the alleged overcharges.[9]

B. Each applicant should specify how it used the product(s)—i.e., whether it was a reseller or an end-user.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled, and furnish OHA will quarterly bank calculations;

(ii) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It is therefore ordered that:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Crystal Oil Company pursuant to the Consent Order executed on March 9, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Date: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2056, Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[9] One potential claimant in this proceeding commented that it might not be able to locate records of all of its purchases for Crystal during the consent order period. While we do not accept *unsubstantiated* estimates of purchase volumes, in certain cases we hae exercised or discretion to accept reasonable methods of estimation. *See Standard Oil Co. (Indiana)/Smith & Sons Amoco*, 11 DOE ¶ 85,136 (1983); *Standard Oil Co. (Indiana/ Christenson Oil Co.*, 11 DOE ¶ 85,006 (1983). Claimants who are unable to provide actual purchase volumes from Crystal for all or part of the consent order period should therefore explain the method used in calculating any estimates of their purchase volumes.

Federal Energy Regulatory Commission

[Docket No. CI86-168-000]

Natural Gas Companies; Application of Tenngasco Corp. and Tenngasco Exchange Corp. for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pre-granted Abandonment

January 27, 1986.

Take notice that on January 17, 1986, Tenngasco Corporation and Tenngasco Exchange Corporation (hereinafter referred to collectively as "Tenngasco") pursuant to sections 4 and 7 of the National Gas Act, 15 U.S.C. 717-717z (1982)(NGA) and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by Tenngasco, and certain producers from whom Tenngasco purchases natural gas who have received abandonment approval from the Commission in a separate proceeding, (2) authorizing sales for resale of natural gas in interstate commerce by certain producers through Tenngasco acting as their agent, and (3) authorizing pre-granted abandonment of such sales.

Applicants state that such authorities, if granted, will enable Tenngasco to sell natural gas in the spot market which it purchases from certain producers who have received appropriate abandonment authorizations from the Commission. Such authority will also enable Tenngasco to act as agent for various producers who have received such abandonment authorizations in the sale for resale of their gas on the spot market. Therefore, the sources of gas eligible for the sales and pre-granted abandonment authority will be those supplies for which a producer has received abandonment authorization from the Commission, including those granted pusuant to § 2.77 of the Commission's regulations. As such, many of these sources shall involve situations where abandonment authorization has been granted to (1) producers who were subject to substantially reduced takes without payment; or (2) the parties have entered into a take-or-pay buy-out pursuant to § 2.76 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2081 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol Northwest Central Pipeline Corp.; Order Granting Request for Waiver

Issued: January 24, 1986

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 6, 1986, Northwest Central Pipeline Corporation filed a request for waiver of the restrictions in the transitional provisions of §§ 284.105 and 284.223(g)(1) of Order No. 436.[1] We will grant Northwest Central's request.

Prior to October 9, 1985, Northwest Central commenced transporting gas to Faustina Pipe Line Company, Northern Gas Marketing, Inc., and Scissortail Natural Gas Company under section 311 of the Natural Gas Policy Act of 1978 or

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

former § 157.209(a)(1) of the Commission's Regulations. The gas Northwest Central transports to Faustina, Northern Gas, and Scissortail originates with six producers in Kansas and Oklahoma.[2]

Prior to October 9, 1985, Northwest Central entered into written agreements with the six producers to construct new taps and metering facilities in order for the producers to deliver gas into Northwest Central's system. The producers made an initial payment of between $32,800 and $61,000 to Northwest Central for constructing the taps.[3] With one exception, these payments were made before October 9. Northwest Central did not complete construction of the taps until after October 9. In addition, by October 9 the producers had "completed or substantially completed" gathering systems connecting their wells to the new taps. Costs for the gathering systems ranged from approximately $10,000 to $1,188,000. Northwest Central states that there will be no changes in the volumes of gas transported to Faustina, Northern Gas, and Scissortail as a result of the new taps.

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

We conclude that the six producers have shown that they have expended substantial funds or constructed significant facilities prior to October 9 in reliance on transportation contracts. Accordingly, we hereby waive the restrictions in §§ 284.105 and 284.223(g)(1) to the extent necessary to permit the transportation transactions to continue.

[2] The six producers are J.E.B. Gas, Inc., S.E. Kansas Company, Inc., Sevco Energy Corporation, Tag Petroleum, Elgin Gas Company, and Antioch Gathering Company. J.E.B. Gas, S.E. Kansas, Tag, Elgin, and Antioch have filed answers in support of Northwest Central's request.

[3] Northwest Central states that it will bill the producers for any differences between the initial payment and the final cost of construction. Ownership of the taps will remain with Northwest Central.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2071 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-476-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Champlin Petroleum Co., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 22, 1986.

Take notice that the following filings have been made with the Commission.

1. Champlin Petroleum Company

[Docket No. QF86-476-000]

On January 6, 1986, Champlin Petroleum Company (Applicant), of 5800 Quebec Street, P.O Box 1257, Englewood, Colorado 80150 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Harbor Cogeneration Project will be located near the cities of Los Angeles and Long Beach in Los Angeles County, California. The facility will include a combustion turbine-generator, and a Heat Recovery Steam Generator (HRSG). The steam from the HRSG will be used for thermally enhanced oil recovery. The electric power production capacity of the facility will be 80 MW. The primary energy source will be natural gas supplemented with refinery gas. The facility will be owned by a California partnership to be formed between entities including Champlin Energy Company, a wholly owned subsidiary of Champlin Petroleum Company, and South Coast Energy Company (SCEC), a wholly owned subsidiary of Southern California Edison Company. SCEC will own thirty percent of the facility. The installation of the facility will commence in November, 1986.

2. General Electric Company, Martinez Cogen, Pacific Gas & Electric Company

[Docket No. QF86-484-000]

On January 7, 1986, General Electric Company et al. (Applicant), of One River Road, Schenectady, New York 12345 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Martinez, California. The facility will consist of a combustion turbine-generator, a heat recovery steam generator (HRSG) with supplementary firing and an extraction steam turbine-generator. The extracted steam is used in the refining and processing of crude oil in the Shell Oil Company's manufacturing plant. The net electrical power production capacity of the facility will be 49,900 kW. The primary energy source will be natural gas or refinery by-product gas or a combination thereof. Fifty percent of the facility will be owned by the Pacific Gas and Electric Company. The installation of the facility is expected to commence in July 1986.

3. Chester Solid Waste Associates—Project A—Project B

[Docket Nos. QF86-481-000, and QF86-482-000]

On December 31, 1985, Chester Solid Waste Associates (Applicant), of Front & Thurlow Streets, Chester, Pennsylvania 19103 submitted for filing two applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittals constitute complete filings.

Both the Project A and Project B will each be part of a water wall, mass burn, solid waste disposal and resource recovery facility located in Chester, Pennsylvania. The net power production capacity of each project will be 24 MW. The primary energy source will be biomass in the form of municipal solid waste.

4. The City of Boulder, Colorado

[Docket No. QF86-473-000]

On January 6, 1986, the City of Boulder, Colorado (Applicant), of Department of Utilities, P.O. Box 791, Boulder, Colorado 80306 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility located at the City's 75th Street Wastewater Treatment Plan, 4049 75th Street, Boulder, Colorado, will consist of two engine-generator units rated at 300 kW each for methane gas and 350 kW for natural gas for each generator, for a

total installed capacity of 600 kW for methane and 700 kW natural gas. Wastewater Treatment Plant anaerobic digester produced methane will be the primary source of fuel. Heat recovered from the engines will normally maintain the optimum process temperature of the digesters at 95 degrees °F and will also heat the Wastewater Treatment Plant buildings. Supplemental heat, when required, will be supplied by an existing natural gas auxiliary boiler or by using natural gas to operate the engine-generators at a higher load than methane alone can produce.

Standard Paragraphs

E. 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 86-2075 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-21-017, et al.]

Columbia Gas Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 27, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 7, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing Date	Company	Docket No.	Type filing
9-30-85	Columbia Gas Transmission Corp.	TA82-1-21-017	Report.
10-15-85	Williston Basin Interstate Pipeline Co.	RP85-97-003	[1] Btu.
1-09-86	K.N. Energy, Inc.	RP85-98-002	[1] Btu.
1-10-86	Granite State Gas Transmission, Inc.	RP73-17-011	[1] Btu.
1-15-86	Mid-Louisiana Gas Co.	RP85-82-003	[1] Btu.
1-15-86	Tennessee Gas Pipeline Co.	RP81-54-022	Report.

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings will receive new sub-docket numbers.

[FR Doc. 86-2076 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA84-15-000]

Minnesota Power & Light Co.; Order to Show Cause and Instituting Proceedings Under Part 41 of the Commission's Regulations

Before Commissioners: A. G. Sousa, Acting Chairman, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Issued: January 24, 1986.

On September 18, 1985, the Commission issued a letter order in which it noted Minnesota Power & Light Company's (MP&L) disagreement with two items contained in a Commission staff report prepared following an audit of the company's books and records. The disagreement relates to MP&L's accounting and wholesale fuel adjustment clause (FAC) treatment for (1) payments to outside attorneys to litigate the Montana coal severence tax, and (2) payments to outside attorneys and company administrative and general expenses (A&G) incurred to litigate the propriety of Burlington Northern tariff increases.[1]

On October 14, 1985, MP&L responded to the letter order stating that it consents to the disposition of the above issues in accordance with the shortened procedures provided for under section 41.3 of the Commission's regulations under the Federal Power Act.[2] Accordingly, the Commission hereby institutes proceedings under Part 41 of its regulations to determine the appropriate accounting treatment of the above items.

Additionally, resolution of these accounting items may have rate implications requiring refunds under sections 205 and 206 of the Federal Power Act. For this reason, the Commission orders Minnesota Power & Light Company, as part of its initial brief in this proceeding, (1) to show cause why it should not be required to make refunds of any amounts found to have been improperly collected due to an inappropriate accounting treatment of these items, and (2) to propose an allocation of refunds among customers in the event that they are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice of Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

The following procedural schedule is established:

(1) Minnesota Power & Light Company, and interested person and the Commission's staff shall file initial briefs in response to this order on the accounting and refund issues no later than 45 days after the date of publication of this order in the **Federal Register**.

(2) Reply briefs shall be due no later than 20 days thereafter.

All briefs must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission orders:

(A) Proceedings under Part 41 of the Commission's regulations are hereby instituted with regard to Tariff

[1] See Tariff Compliance Exceptions Nos. 1 and 2 which are set forth in Schedule No. 4 of the audit report attached to this order. The audit report describes MP&L's treatment of these items and the treatment deemed appropriate by the Commission staff under the Uniform System of Accounts and §35.14(a)(6) of the Commission's regulations (18 CFR 35.14(a)(6)). The attachments are not being published in the **Federal Register**, but are available from the Commission's Public Reference Branch.

[2] 18 CFR 41.3 (1985).

Compliance Exceptions Nos. 1 and 2 as described in Schedule No. 4 of the audit report attached to this order.

(B) Minnesota Power & Light Company is ordered, as part of its initial brief in this proceeding, (1) to show cause why it should not be required to make refunds of any amounts found to have been improperly collected due to an inappropriate accounting treatment of the items in Tariff Compliance Exceptions Nos. 1 and 2, and (2) to propose an allocation of refunds among customers in the event that refunds are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

(C) The procedural schedule set forth in the body of this order is hereby adopted.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2077 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-354-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Self-Implementing Transactions

January 27, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before February 12, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). 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 party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-354	Panhandle Eastern Pipe Line Co	James River Corp	11-01-85	F(157)	D	
ST86-355	Valero Transmission Co	Pacific Lighting Gas Supply Co	11-01-85	C	D	
ST86-356	ANR Pipeline Co	Federal Mogul/Bower Roller Bearing	11-01-85	F(157)	D	
ST86-357	do	Providence Gas Co	11-01-85	B		
ST86-358	El Paso Natural Gas Co	Black Mountain Gas Co		11-01-85		B
ST86-359	do	Giant Industries, Inc	11-01-85	F(157)		
ST86-360	do	Westar Transmission Co	11-01-85	B		
ST86-361	do	City of Lordsburg	11-01-85	B		
ST86-362	do	Gas Company of New Mexico	11-01-85	B		
ST86-363	do	City of Las Cruces	11-01-85	B		
ST86-364	do	Navajo Tribal Utility Authority	11-01-85	B		
ST86-365	do	City of Willcox	11-01-85	B		
ST86-366	Valero Interstate Transmission Co	Big Sandy Gas Corp	11-01-85	B		
ST86-367	Valero Transmission Co	Valero Interstate Transmission Co	11-01-85	C		
ST86-368	United Gas Pipe Line Co	Consolidated Gas Transmission Co	11-01-85	G		
ST86-369	Texas Gas Transmission Corp	Buckman Laboratories, Inc	11-01-85	F(157)		
ST86-370	Transcontinental Gas Pipe Line Corp	Nabisco Brands, Inc	11-01-85	F(157)		
ST86-371	do	Union Carbide Corp	11-01-85	F(157)		
ST86-372	Michigan Gas Storage Co	Consumers Power Co	11-01-85	B		
ST86-373	do	Dow Corning Corp	11-01-85	F(157)		
ST86-374	do	Hemlock Semiconductor Corp	11-01-85	F(157)		
ST86-375	do	Michigan Sugar Co	11-01-85	F(157)		
ST86-376	Transcontinental Gas Pipe Line Corp	Consolidated Gas Transmission Corp	11-06-85	G		

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-377	do	Columbia Gas Transmission Co	11-06-85	G		
ST86-378	do	Consolidated Gas Transmission Corp	11-06-85	G		
ST86-379	Westar Transmission Co	Pacific Lighting Co	11-06-85	C		
ST86-380	Texas Gas Transmission Corp	Crucible Magnetics Corp	11-07-85	F(157)		
ST86-381	Texas Eastern Transmission Corp	Allied Corp., *et al*	11-07-85	F(157)		
ST86-382	ANR Pipeline Co	Pacific Lighting Gas Supply Co	11-07-85	B		
ST86-383	Northwest Central Pipeline Corp	Kansas Power and Light Co	11-08-85	B		
ST86-384	Rockland Pipeline System	Northern Natural Gas Co	11-01-85	C		
ST86-385	Tennessee Gas Pipeline Co	Energy North, Inc	11-08-85	B		
ST86-386	Texas Gas Transmission Corp	Faustina Pipe Line Co	11-08-85	B		
ST86-387	do	Ralston Purina Co	11-08-85	F(157)		
ST86-388	United Gas Pipeline Co	Mississippi River Transmission Corp	11-08-85	G		
ST86-389	do	Al Tech Specialty Steel Corp	11-08-85	F(157)		
ST86-390	do	NGP Pipeline Co	11-08-85	B		
ST86-391	do	Connecticut Natural Gas Co	11-08-85	B		
ST86-392	do	Ohio Cumberland Gas Co	11-08-85	B		
ST86-393	do	Jeannette Sheet Glass Corp	11-08-85	F(157)		
ST86-394	do	Central Illinois Public Service Co	11-08-85			
ST86-395	do	Alabama Gas Corp., *et al*	11-08-85	B		
ST86-396	do	Transcontinental Gas Pipe Line Corp	11-08-85	G		
ST86-397	Colorado Interstate Gas Co do	Pacific Lighting Gas Supply Co	11-08-85	B		
ST86-398	do	Public Service Co. of New Mexico	11-08-85	F(157)		
ST86-399	Tennessee Gas Pipeline Co	Alabama Tennessee Natural Gas Co	11-08-85	G		
ST86-400	do	Valley Gas Co	11-12-85	B		
ST86-401	Southern Natural Gas Co	Columbus Mills, Inc	11-12-85	F(157)		
ST86-402	United Gas Pipe Line Co	Clark-Mobil Counties Gas District	11-12-85	B		
ST86-403	do	Mobile Gas Service Corp	11-12-85	B		
ST86-404	Tennessee Gas Pipeline Co	Fitchburg Gas & Electric Co	11-12-85	B		
ST86-405	Trunkline Gas Co	Transcontinental Gas Pipe Line Corp	11-12-85	G		
ST86-406	Panhandle Eastern Pipe Line Co	East Ohio Gas Co	11-12-85	B		
ST86-407	do	McGraw-Edison Co	11-12-85	F(157)		
ST86-408	do	Kraft, Inc	11-12-85	F(157)		
ST86-409	do	Hayes-Albion Corp	11-12-85	F(157)		
ST86-410	do	Dow Corning Corp	11-12-85	F(157)		
ST86-411	do	Coldwater Rendering Co., Inc	11-12-85	F(157)		
ST86-412	do	Hemlock Semiconductor Corp	11-12-85	F(157)		
ST86-413	Trunkline Gas Co	Atlanta Gas Light Co	11-12-85	B		
ST86-414	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co	11-12-85	G		
ST86-415	do	Niagara Mohawk Power Corp	11-12-85	B		
ST86-416	Panhandle Eastern Pipe Line Co	Michigan Sugar Co	10-30-85	F(157)		
ST86-417	do	National Steel Corp	10-30-85	F(157)		
ST86-418	Trunkline Gas Co	do	10-30-85	F(157)		
ST86-419	Panhandle Eastern Pipe Line Co	Interlake, Inc	10-30-85	F(157)		
ST86-420	Trunkline Gas Co	do	10-30-85	F(157)		
ST86-421	Michigan Gas Storage Co	Michigan Sugar Co	11-01-85	F(157)		
ST86-422	El Paso Natural Gas Co	Southern Union Gas Co	11-04-85	B		
ST86-423	Delhi Gas Pipeline Corp	Pacific Lighting Gas Supply Co. *et al*	11-04-85	C		
ST86-424	do	Texas Eastern Trans. Corp., *et al*	11-04-85	C		
ST86-425	Trunkline Gas Co	Interlake, Inc	11-04-85	F(157)		
ST86-426	Panhandle Eastern Pipe Line Co	do	11-04-85	F(157)		
ST86-427	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	11-04-85	G		
ST86-428	Northern Natural Gas Co	Energas Co	11-04-85	B		
ST86-429	Southern Natural Gas Co	Florida Gas Transmission Co	11-04-85	G		
ST86-430	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	11-04-85	B		
ST86-431	do	Owens-Corning Fiberglas Corp	11-04-85	F(157)		
ST86-432	do	Fall River Gas Co	11-04-85	B		
ST86-433	do	UGI Corp., *et al*	11-04-85	B		
ST86-434	do	Providence Gas Co	11-04-85	B		
ST86-435	do	Connecticut Natural Gas Corp	11-04-85	B		
ST86-436	Dow Pipeline Co	Phillips Gas Pipeline Co	11-04-85	C		
ST86-437	Florida Gas Transmission Co	Panhandle Gas Co	11-04-85	B		
ST86-438	Williston Basin Inter. Pipeline Co	Terra Chemicals International, Inc	11-05-85	F(157)		
ST86-439	Columbia Gulf Transmission Co	Exxon Company, U.S.A	11-05-85	F(157)		
ST86-440	Panhandle Eastern Pipe Line Co	Pekin Energy Co	11-13-85	F(157)		
ST86-441	Southern Natural Gas Co	Alabama Kraft Corp	11-13-85	F(157)		
ST86-442	Tennessee Gas Pipeline Co	Energy North, Inc	11-14-85	B		
ST86-443	National Fuel Gas Supply Corp	Granite State Gas Transmission, Inc	11-14-85	G		
ST86-444	Tennessee Gas Pipeline Co	Q.O. Chemicals, Inc., *et al*	11-14-85	F(157)		
ST86-445	Midwestern Gas Transmission Co	Peoples Gas Light and Coke Co	11-14-85	B		
ST86-446	Tennessee Gas Pipeline Co	T.W. Phillips Gas & Oil Co	11-14-85	B		
ST86-447	El Paso Natural Gas Co	Petrofina Gas Pipeline Co	11-15-85	B		
ST86-448	do	Transwestern Pipeline Co	11-15-85	G		
ST86-449	do	Salt River Project Agricultural Improvement and Power District	11-15-85	B		
ST86-450	Southern Natural Gas Co	Vista Polymers, Inc	11-15-85	F(157)		
ST86-451	Northern Natural Gas Co	Krause Milling Co	11-15-85	F(157)		
ST86-452	do	Northern States Power of Wisconsin	11-15-85	C		
ST86-453	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	11-15-85	C		
ST86-454	United Gas Pipe Line Co	Baltimore Gas and Elect. Co., *et al*	11-15-85	B		
ST86-455	Tennessee Gas Pipeline Co	North Penn Gas Co	11-15-85	B		
ST86-456	do	Berkshire Gas Co	11-15-85	B		
ST86-457	United Gas Pipe Line Co	Long Island Lighting Co	11-15-85	B		
ST86-458	Northern Natural Gas Co	Nekoosa Papers, Inc	11-15-85	F(157)		
ST86-459	ANR Pipeline Co	Appleton Papers, Inc	11-18-85	F(157)		
ST86-460	Tennessee Gas Pipeline Co	Central Hudson Gas and Electric Co	11-18-85	B		
ST86-461	Texas Eastern Transmission Corp	Amstar Corp	11-14-85	F(157)		
ST86-462	Colorado Interstate Gas Co	Cascade Natural Gas Corp	11-14-85	B		
ST86-463	Southern Natural Gas Co	Englehard Corp	11-19-85	F(157)		
ST86-464	United Gas Pipe Line Co	Great Lakes Sugar Co	11-19-85	F(157)		
ST86-465	do	Consolidated Gas Transmission Corp	11-19-85	G		
ST86-466	Southern Natural Gas Co	Richtex Brick Corp	11-19-85	F(157)		
ST86-467	Northwest Central Pipeline Corp	Bethlehem Steel Corp	11-19-85	F(157)		
ST86-468	Valero Interstate Transmission Co	THC Pipeline Co	11-20-85	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-469	Valero Transmission Co	Richardson Fuels, Inc	11-20-85	C		
ST86-470	Seagull Energy Corp	Seagull Interstate Corp	11-20-85	C		
ST86-471	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	11-20-85	B		
ST86-472	ANR Pipeline Co	Longhorn Pipeline Co	11-20-85	B		
ST86-473	Columbia Gas Transmission Corp	Shawnee Public Schools, Lima, OH	11-21-85	F(157)		
ST86-474	do	GTE Products Corp	11-21-85	F(157)		
ST86-475	do	Brockway, Inc	11-21-85	F(157)		
ST86-476	do	Bethlehem Steel Corp	11-21-85	F(157)		
ST86-477	do	Armco, Inc	11-21-85	F(157)		
ST86-478	Colorado Interstate Gas Co	Pubic Service Co. of Colorado	11-21-85	B		
ST86-479	do	People Natural Gas Co	11-21-85	B		
ST86-480	Natural Gas Pipeline Co. of America	Faustina Pipeline Co	11-21-85	B		
ST86-481	Colorado Interstate Gas Co	Wycon Chemical Co	11-21-85	F(157)		
ST86-482	Tennessee Gas Pipeline Co	E.I. Dupont De Nemours and Co	11-21-85	F(157)		
ST86-483	Colorado Interstate Gas Co	Southwest Gas Corp	11-21-85	B		
ST86-484	Columbia Gulf Transmission Co	U.S.S. Chemicals	11-21-85	F(157)		
ST86-485	do	Sun Refining and Marketing Co	11-21-85	F(157)		
ST86-486	do	St. Joe Resources	11-21-85	F(157)		
ST86-487	do	Shawnee Public Schools, Lima, OH	11-21-85	F(157)		
ST86-488	do	GTE Products Corp	11-21-85	F(157)		
ST86-489	do	Certain Teed Corp	11-21-85	F(157)		
ST86-490	do	Bethlehem Steel Corp	11-21-85	F(157)		
ST86-491	do	U.S. Steel Corp	11-21-85	F(157)		
ST86-492	do	Armco, Inc	11-21-85	F(157)		
ST86-493	Columbia Gas Transmission Corp	Sun Refining and Marketing Co	11-21-85	F(157)		
ST86-494	do	St. Joe Minerals Corp	11-21-85	F(157)		
ST86-495	Northern Natural Gas Co	Energy North Co	11-22-85	B		
ST86-496	ANR Pipeline Co	Peoples Natural Gas Co	11-22-85	B		
ST86-497	do	Wisconsin Natural Gas Co	11-22-85	B		
ST86-498	Mid Louisiana Gas Co	Tennessee Gas Pipeline Co	11-22-85	G		
ST86-499	East Ohio Gas Co	Transcontinental Gas Pipeline Corp	11-22-85	G(HT)		
ST86-500	Delhi Gas Pipeline Corp	South Jersey Gas Co	11-25-85	C		
ST86-501	do	Long Island Lighting Co	11-25-85	C		
ST86-502	ANR Pipeline Co	Uniroyal, Inc	11-25-85	F(157)		
ST86-503	do	Barmet of Indiana, Inc	11-25-85	F(157)		
ST86-504	do	Michigan Consolidated Gas Co	11-25-85	G		
ST86-505	Transcontinental Gas Pipe Line Corp	Hoffman-LaRoche	11-25-85	F(157)		
ST86-506	Tennessee Gas Pipeline Co	New York State Elect. and Gas Corp	11-25-85	B		
ST86-507	do	Corpus Christi Gas Gathering Inc	11-26-85	B		
ST86-508	do	Humco, Div. of Whitco Chemicals	11-26-85	F(157)		
ST86-509	do	Orange and Rockland Utilities	11-26-85	B		
ST86-510	Northern Natural Gas Co	Energy North Co	11-26-85	B		
ST86-511	ANR Pipeline Co	Patrick Cudahy, Inc	11-26-85	F(157)		
ST86-512	do	P.H. Glatfelter Co	11-26-85	F(157)		
ST86-513	do	Fort Howard Paper Co	11-26-85	F(157)		
ST86-514	do	Ladish Co., Inc	11-26-85	F(157)		
ST86-515	Consolidated Gas Transmission Corp	Phoenix Glass Co	11-26-85	F(157)		
ST86-516	Texas Gas Transmission Corp	Judel Glassware Co., Inc	11-26-85	F(157)		
ST86-517	Consolidated Gas Transmission Corp	Metaltech	11-26-85	F(157)		
ST86-518	United Gas Pipe Line Co	Jersey Central Power and Light Co	11-26-85	F(157)		
ST86-519	do	Lukens Steel Co	11-26-85	F(157)		
ST86-520	Consolidated Gas Transmission Corp	Transcontinental Gas Pipe Line Corp	11-26-85	G		
ST86-521	do	Borg-Warner Chemicals, Inc	11-26-85	F(157)		
ST86-522	do	Consolidated Aluminum Corp	11-26-85	F(157)		
ST86-523	do	Diamond-Bathurst, Inc	11-26-85	F(157)		
ST86-524	do	St. Joe Resources Co	11-26-85	F(157)		
ST86-525	do	Bethlehem Steel Corp	11-26-85	F(157)		
ST86-526	United Gas Pipe Line Co	Conley Frog and Switch Co	11-26-85	F(157)		
ST86-527	Consolidated Gas Transmission Corp	Johnstown Corp	11-26-85	F(157)		
ST86-528	do	Pittsburgh Comm. Heat Treating Co	11-26-85	F(157)		
ST86-529	do	Xerox Corp	11-26-85	F(157)		
ST86-530	do	Darlington Brick and Clay Prod. Co	11-26-85	F(157)		
ST86-531	do	Judel Glassware Co., Inc	11-26-85	F(157)		
ST86-532	ANR Pipeline Co	PPG Industries, Inc	11-27-85	F(157)		
ST86-533	Michigan Gas Storage Co	Consumers Power Co	[1] 10-13-83	F(157)		
ST86-534	Columbia Gulf Transmission Co	Libbey Owens Ford Co	11-27-85	F(157)		
ST86-535	do	Luynchburg Gas Co	11-27-85	F(157)		
ST86-536	Columbia Gas Transmission Corp	do	11-27-85	B		
ST86-537	United Gas Pipe Line Co	Louisiana Power and Light Co	11-27-85	F(157)		
ST86-538	do	Allied Corp	11-27-85	F(157)		
ST86-539	Arkla Energy Resources	International Paper Co	11-27-85	F(157)		
ST86-540	do	do	11-27-85	F(157)		
ST86-541	Northwest Pipeline Corp	CPEX Pacific, Inc	11-27-85	F(157)		
ST86-542	do	Cascade Steel Rolling Mills, Inc	11-27-85	F(157)		
ST86-543	do	Boise Cascade Corp	11-27-85	F(157)		
ST86-544	do	Phillips Pacific Chemical Co	11-27-85	F(157)		
ST86-545	do	Washington Water Powr Co	11-27-85	B		
ST86-546	do	Washington Natural Gas Co	11-27-85	B		
ST86-547	ANR Pipeline Co	Bucyrus Erie Co	11-27-85	F(157)		
ST86-548	Northwest Pipeline Corp	CP National Corp	11-27-85	B		
ST86-549	do	Pacific Gas and Electric Co	11-27-85	B		
ST86-550	ANR Pipeline Co	Rockwell International	11-27-85	F(157)		
ST86-551	do	GAF Corp	11-27-85	F(157)		
ST86-552	do	The Larsen Co	11-27-85	F(157)		
ST86-553	do	ARCO Metals Co	11-27-85	F(157)		
ST86-554	do	Miller Brewing Co	11-27-85	F(157)		
ST86-555	do	Vulcan Materials Co	11-27-85	F(157)		
ST86-556	do	Pfister and Vogel Tanning Corp	11-27-85	F(157)		
ST86-557	do	A/C Spark Plug Div., GM Corp	11-27-85	F(157)		
ST86-558	do	Ore-Ida Foods, Inc	11-27-85	F(157)		
ST86-559	do	J.I. Case	11-27-85	F(157)		
ST86-560	do	American Motors Corp	11-27-85	F(157)		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-561	....do	Western Publishing Co., Inc	11-27-85	F(157)		
ST86-562	....do	Mercy Medical Center	11-27-85	F(157)		
ST86-563	....do	Milwaukee Metro. Sewerage Dist	11-27-85	F(157)		
ST86-564	....do	Lake to Lake, Div. Land O'Lakes, Inc	11-27-85	F(157)		
ST86-565	....do	Fox River Paper Co	11-27-85	F(157)		
ST86-566	....do	S.C. Johnson & Son, Inc	11-27-85	F(157)		
ST86-567	....do	Wisconsin Tissue Mills	11-27-85	F(157)		
ST86-568	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	11-29-85	B		
ST86-570	Tennessee Gas Pipeline Co	ANR Pipeline Co	11-29-85	G		
ST86-571	Sun Gas Transmission Co., Inc	Transcontinental Gas Pipe Line Corp	11-29-85	C	04-28-86	28.90
ST86-572	....do	....do	11-29-85	C	04-28-86	28.90

* Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

** The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2)) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[1] This filing (ST86-533, Michigan Gas Storage Co. for Consumers Power Co.) is being noticed out of sequence because it did not receive a docket number when it was originally filed in 1983.

[Docket No. G-3895-003, et al.]

Phillips Petroleum Co., Succ. in Interest to Phillips Oil Co.; Application to Amend Certificates of Public Convenience and Necessity, To Amend Applications, To Redesignate Rate Schedules, and to Redesignate Pending Proceedings

January 27, 1986.

Take notice that on January 2, 1986, Phillips Petroleum Company (Applicant) of 336 HS&L Building, Bartlesville, Oklahoma 74004 filed and application pursuant to section 7 of the Natural Gas Act and § 157.23(b) and 157.24 of the Commission's Regulations for Certificate of Public Convenience and Necessity to Render Service Previously Authorized by the Commission in Certificates of Public Convenience and Necessity heretofore issued to Phillips Oil Company, and requests that Applicant be substituted for Phillips Oil Company in any related proceedings presently pending before the Commission and requests Redesignation of Phillips Oil Company's Rate Schedules, shown in Exhibit "A" and Exhibit "C" attached hereto, all as more fully described in the application which is on file with the Commission and open to public inspection.

Effective as of August 1, 1985, Phillips Petroleum Company and Phillips Oil Company merged pursuant to Delaware law. As a result of the merger, applicant has succeeded to the properties and interests of Phillips Oil Company.

The rate schedules and certificates identified in Exhibit "C" were assigned by Phillips Oil Company to applicant under the terms of various assignments executed from March through May 1985, all effective as of January 1, 1985.

Applicant requests that the successor certificate to be issued relating to the certificates and rate schedules identified in Exhibit "A" be effective as of August 1, 1985, and that the successor certificate issued relating to the certificates and rate schedules identified in Exhibit "C" be made effective as of January 1, 1985.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 11, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Phillips Oil Co. RS No.	Purchaser	Phillips Oil Co. certificate docket
1	United Gas Pipeline Co	G-3895
2	Kansas Nebraska Natural Gas Co.	G-3895
[1] 3	Texas Eastern Transmission Corp.	G-3895
6	Southern Natural Gas Co	G-18054
7	El Paso Natural Gas Co	G-18543
8	United Gas Pipeline Co	CI60-149
[1] 9	Arkansas Louisiana Gas Co	CI60-149
10	United Gas Pipeline Co	G-19284
13	Transcontinental Gas Pipe Line Corp.	CI61-182, CI63-1309
14	Arkansas Louisiana Gas Co	CI62-218
15	Mississippi River Trans. Corp	G-5985
17	Arkansas Louisiana Gas Co	CI61-1017
[1] 18	Columbia Gas Transmission Corp.	CI63-886
[1] 21	....do	CI64-364
22	Warren Petroleum Corp	CI64-657
28	Transcontinental Gas Pipe Line Corp.	CI68-666
30	United Gas Pipeline Co	CI68-862
32	ANR Pipeline Co	CI71-846
[1] 33	Southern Natural Gas Co	CI71-855

EXHIBIT A—Continued

Phillips Oil Co. RS No.	Purchaser	Phillips Oil Co. certificate docket
35	Texas Gas Transmission Corp	CI-73-243
36	Arkansas Louisiana Gas Co	G-3895
37	....do	G-5973, G-5985
38	United Gas Pipeline Co	CI61-316, C161-1230, CI62-1502, CI67-179
39	....do	CI76-136, G-15479, CI60-149, CI72-252
42	Transwestern Pipeline Co	CI77-256
44	....do	CI77-443
45	El Paso Natural Gas Co	CI77-453
52	Transcontinental Gas Pipeline Corp.	CI80-37
55	Columbia Gas Transmission Corp.	CI80-243
61	United Gas Pipeline Co. and Southern Natural Gas Co.	CI81-54
62	....do	CI81-55
67	Transcontinental Gas Pipeline Corp.	CI82-221
68	Tennessee Gas Pipeline Co	CI82-333
70	El Paso Natural Gas Co	CI84-200
71	Columbia Gas Transmission Corp.	CI84-201
72	Southern Natural Gas Corp	CI84-202
73	....do	CI84-203
74	Trunkline Gas Co	CI84-247
75	Northern Natural Gas Co	CI84-226
76	Transcontinental Gas Pipe Line Corp.	CI67-1645
78	....do	CI67-1744
79	Southern Natural Gas Co	CI84-351
80	United Gas Pipeline Co	CI84-354
81	Florida Gas Transmission	CI84-438
82	Transcontinental Gas Pipeline Corp.	CI76-772
83	El Paso Natural Gas Co	G-13963
84	Mesa Petroleum Co	CI85-280

[1] Denotes Operator, et al.

POC.RS No. *	Aminoil RS No.	Purchaser	Certificate docket
85	1	Northwest Central Pipeline Corp.	G-2570
86	[1] 4	El Paso Natural Gas Co	G-11627
87	8	Williston Basin Interstate Pipeline Co.	CI61-1271
88	10	Northwest Central Pipeline Corp	CI64-612
89	14	Lone Star Gas Co	G-3978
90	15	....do	CI62-98
91	16	....do	CI63-394
92	[1] 17	Transcontinental Gas Pipe Line Corp.	CI68-639
93	[1] 20	Sea Robin Pipeline Co	CI69-949
94	[1] 21	Southern Natural Gas Co	CI69-1097

POC.RS No. *	Aminoil RS No.	Purchaser	Certificate docket
95	24	Lone Star Gas Co.	CI66-20
96	26	Panhandle Eastern Pipe Line Co.	CI70-374
97	27	....do	CI70-375
98	29	Lone Star Gas Co.	G-6668
99	30	....do	CI62-739
100	31	....do	CI63-577
101	33	....do	G-6668
102	34	....do	CI66-20, CI71-226
103	35	....do	CI71-910
104	39	Texas Eastern Transmission Corp	CI74-735
105	40	Tennessee Gas Pipeline Co	CI75-225
106	41	El Paso Natural Gas Co.	CI75-484
107	42	Northwest Pipeline Corp.	CI78-166
108	43	Texas Eastern Transmission Corp	CI77-655
109	45	Florida Gas Transmission Co.	CI78-1061
110	46	Texas Eastern Transmission Corp	CI78-1279
111	47	....do	CI79-137
112	48	Natural Gas Pipeline Co. of America.	CI79-170
113	50	Transcontinental Gas Pipe Line Corp.	CI79-577
114	51	United Gas Pipe Line Co.	CI78-910
115	52	Tennessee Gas Pipeline Co..	CI80-457
116	53	....do	CI80-458
117	54	ANR Pipeline Co.	CI80-452
118	55	....do	CI80-453
119	56	Columbia Gas Transmission Corp.	CI80-486
120	58	Texas Eastern Transmission Corp	CI81-367
121	59	....do	CI81-407
122	60	....do	CI77-244
123	61	....do	CI77-853
124	62	Natural Gas Pipeline Co. of America.	CI76-209
125	63	Trunkline Gas Co	CI76-379
126	64	Transcontinental Gas Pipe Line Corp	CI76-327
127	65	Natural Gas Pipeline Co. of America.	CI77-656
128	67	....do	CI78-751
129	68	....do	CI78-752
130	69	....do	CI78-135
131	70	....do	CI79-90
132	71	Transcontinental Gas Pipe Line Corp	CI79-171
133	72	Natural Gas Pipeline Co. of America.	CI79-454
134	73	....do	CI79-455
135	74	....do	CI79-459
136	75	....do	CI79-576
137	76	....do	CI79-578
138	77	Sea Robin Pipeline Co	CI80-451
139	78	Natural Gas Pipeline Co. of America.	CI81-118
140	79	ANR Pipeline Co	CI81-356
141	80	Tennessee Gas Transmission Co.	CI60-399
142	81	Southern Natural Gas Co..	CI61-173
143	83	....do	CI68-538
144	84	....do	CI68-1218
145	85	....do	CI60-607
146	86	Tennessee Gas Pipeline Co	CI80-204
147	87	Natural Gas Pipeline Co. of America	CI82-215
148	88	Tennessee Gas Pipeline Co	CI82-209
149	89	Trunkline Gas Co	CI82-303
150	91	Transcontinental Gas Pipeline Corp	CI82-313
151	92	....do	CI82-315
152	93	....do	CI82-357
153	94	....do	CI82-358
154	95	Natural Gas Pipeline Co. of America	CI79-219
155	96	Texas Eastern Transmission Corp	CI84-333
156	97	Neches Gas Distribution Co	G-2570
157	98	The city of Long Beach CA	CI85-93

! Denotes operator, et al.
* Tentatively designated.

EXHIBIT C

Phillips Oil Co. RS No.*	Aminoil Inc. RS No.	Purchaser	Aminoil, Inc. Certificate Docket No.
92	17	Transcontinental Gas Pipe Line Corp.	CI68-639
93	20	Sea Robin Pipeline Co	CI69-949
106	41	El Paso Natural Gas Co	CI75-484
110	46	Texas Eastern Transmission Corp.	CI78-1279
113	50	Transcontinental Gas Pipe Line Corp.	CI79-577
117	54	ANR Pipeline Co	CI80-452
120	58	Texas Eastern Transmission Corp.	CI81-367
128	67	Natural Gas Pipeline Co. of America.	CI78-751
129	68	....do	CI78-752
130	69	....do	CI78-135
132	71	Transcontinental Gas Pipe Line Corp.	CI79-171
133	72	Natural Gas Pipeline Co. of America.	CI79-454
134	73	....do	CI79-455
135	74	....do	CI79-459
138	77	Sea Robin Pipeline Co	CI80-451
139	78	Natural Gas Pipeline Co. of America.	CI81-118
140	79	ANR Pipeline Company	CI81-356
147	87	Natural Gas Pipeline Co. of America.	CI82-215
154	95	....do	CI79-219

* Tentatively designated.

[FR Doc. 86-2079 Filed 1-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI64-1057-000, et al.]

Tenneco Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

January 27, 1986.

Take notice that each of the Applicants listed herein has failed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are 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 applications should on or before February 11, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI64-1057-000, D, Dec. 24, 1985	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001	Texas Eastern Transmission Corp., Bethany-Longstreet Field, Caddo, Parish, LA.	(1)	
CI64-1069-000, D, Dec. 24, 1985	....do	Texas Easstern Transmission Corp., Bethany-Longstreet Field, Desoto, Parish, LA.	(1)	
CI66-470-006, D , Jan. 6, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Arkla Energy Resources, Bokoshe, South Field, Le Flore County, OK.	(2)	
CI66-1328-000, D, Jan. 6, 1986	....do	Panhandle Eastern Pipe Line Co., Tangier Area, Ellis and Woodward County, OK.	(3)	
CI67-1085-002 D, Jan. 6, 1986	....do	Ringwood Gathering Co., Ringwood Field, Major County, OK.	(4)	
CI72-519-002, D, Nov. 27, 1985	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Washington Ranch Field, Eddy County, NM	(5)	
CI77-422-002, D, Dec. 11, 1985	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Transcontinnental Gas Pipe Line Corp., High Island Block 111 Field, Block 137 and North Half of Block 138, Offshore TX.	(6)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI79-435-001 D, Dec. 11, 1985	....do	Transco Gas Supply Co., West Cameron Area Blocks 402 and 405, Offshore LA.	(7)	
CI84-160-002, D, Oct. 10, 1985	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Texas Eastern Transmission Corp., Mississippi Canyon 280 Field, Offshore LA.	(8)	
CI86-142-000, A, Jan. 8, 1986	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Tennessee Gas Pipeline Co., East Cameron Block 33 "D", Offshore LA.	(9)	14.73
CI86-153-000, F, Jan. 13, 1986	Shell Offshore Inc. (Succ. in Interest to Petro-Lewis Corp., P.O. Box 4480, Houston, TX 77210.	Transcontinental Gas Pipe Line Corp., Mississippi Canyon Block 194 Field, Offshore LA.	(10)	14.73
CI86-154-000, (CI77-243), B, Jan. 13, 1986.	Sun Exploration & Production Co.	Panhandle Eastern Pipe Line Co., South Peek Field, Ellis, County, OK.	(11)	
CI86-155-000 (G-13362), B, Jan. 13, 1986.	....do	Trunline Gas Co., Clear Creek Field, Beauregard Parish, LA.	(12)	
CI86-156-000 (CI75-417), B, Jan. 13, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Mountain Fuel Supply Co., South Baggs Field, Carbon County, WY.	(13)	
CI86-163-000 F, Jan. 15, 1986	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, TX 75201.	ANR Pipeline Co., Laverne Field, Harper County, OK	(14)	14.73
CI86-164-000 (CI77-686), B, Jan. 16, 1986.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94210-7309.	ANR Pipeline Co., West Cameron Block 265, OCS-G-2537, Offshore LA.	(15)	
CI86-166-000, B, Jan. 17, 1986	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Shell Oil Co. and Exxon Co. U.S.A. (Succ. in Interest to The Carter Oil Co.), Bayou Field, Carter County, OK.	(16)	
CI86-167-000 (CI75-20), B, Jan. 17, 1986.	Sun Exploration & Production Co.	United Gas Pipe Line Co., East Dykesville Field, Claiborne Parish, LA.	(17)	
CI86-169-000 (CI61-979), B, Jan. 17, 1986.	Union Texas Petroleum Corp., P.O. Box 2120, Houston, TX 77252-2120.	Cities Service Gas Co., North Norman Field, Cleveland County, OK.	(18)	
CI86-170-000 (G-19644), B, Jan. 17, 1986.	....do	El Paso Natural Gas Co., Jack Herbert Field, Upton County, TX.	(19)	

[1] Depletion in the lease dedication.
[2] Partial Assignment and Bill of Sale covering Sun's interest in the Kinsey Odis Unit to Landmark Exploration Company.
[3] Partial Assignment and Bill of Sale covering the F. W. Moore Unit to Oilsearch Corp.
[4] Partial Assignment and Bill of Sale covering the Hutchings wells to Entex Energy Operating, Ltd.
[5] Three leases in the Washington Ranch Field, Eddy County, New Mexico, were jointly owned with El Paso Exploration and held beyond their 1976 expiration dates by El Paso's production from its Miller #1 gas well. When El Paso plugged and abandoned its Miller #1 well, these leases expired due to lack of production and were released by Cities Service.
[6] Federal Lease (OCS-G-3234 (High Island Block 137) was released on 11-2-82.
[7] Federal Lease (OCS-G-2843 West Cameron Block 402 was released on 11-30-79.
[8] Exxon is desirous of using gas produced from the field for injection, from time to time, into reservoirs underlying the South Pass 89 Field since this injection program will increase the oil and gas reserves to be recovered from the fields. Gas from South Pass 89 Field will be sold to Texas Eastern Transmission Corporation under a certificate applied for in Docket No. CI85-643-000. Exxon will maintain records of the gas injected, by source, in each field and will sell the reproduced gas to Texas Eastern under the terms of the contract pertaining to the field from which the gas was originally produced as such contract exists at the time the gas is sold.
[9] Applicant is filing under Gas Purchase and Sales Agreement dated 12-2-85.
[10] Effective as of 12-31-84, Florida Offshore Productive, Inc. (FOPI) assigned to SOI an undivided .2704 percent interest in three leases in the Mississippi Canyon Block 194 Field, Offshore Louisiana.
[11] Last producing property under contract sold 8-1-84.
[12] Clear Creek Unit sold to Union Oil Company 2-1-85. It was the only producing property under contract.
[13] Last producing properties under contract sold.
[14] By an Assignment effective 11-15-84, Applicant acquired from Dan E. Archer and Delbert Davis certain property that had been previously committed to a Gas Purchase Contract dated 2-22-67 between Dan E. Archer and Delbert Davis, Seller, and Michigan Wisconsin Pipe Line Company, Buyer.
[15] Acreage subject to Rate Schedule 518 was assigned to Walter Oil and Gas Corporation effective 7-23-85.
[16] Normal depletion and contract passed its primary term.
[17] J.W. Prather #1 and L. T. Waller #1 have been plugged and abandoned. Contract expired 8-24-84.
[18] The Contract expired by its own terms on 12-6-80. No deliveries have been made to Cities from the acreage dedicated to the Contract since December, 1982.
[19] Production has ceased from the Windham R-S-#1 well and the leases from the NE/4 Section 108 Block D and S/2 Section 103 Block D have expired in 1972 & 1969 respectively. There is no production from the SW/4 Section 107 Block D and the well was plugged and abandoned on 2-7-72.

Filing Code: A—Initial Service; B—Abandoned; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession

[FR Doc. 86-2080 Filed 1-229-86 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-276-000]

Transwestern Pipeline Co.; Application

January 27, 1986.

Take notice that on January 16, 1986, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77001, filed in Docket No. CP86-276-000 an application pursuant to sections 7(b) and (c) of the Natural Gas Act for permission and approval to (a) abandon of the sale of natural gas by Transwestern to Northwest Central Pipeline Corporation (Northwest Central) under Transwestern's Rate Schedule CDQ-2 and the termination of the certificate of public convenience and necessity issued in Docket No. G-20464 which authorized such sale, and (b) abandon partially, to a reduced firm contract demand of 127,214 dt equivalent of gas per day, the sale of natural gas by Transwestern to Northwest central under Transwestern's Rate Schedule CDQ-3 which was authorized by certificate granted to Transwestern in Docket Nos. CP67-220 and CP67-339 and for a certificate of public convenience and necessity authorizing additional points of delivery and certain other revisions to Transwestern's Rate Schedule CDQ-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on July 30, 1985, Transwestern filed a major rate increase with the Commission in Docket No. RP85-175-000. Transwestern states that this filing resulted in an Order dated August 29, 1985, wherein the Commission accepted certain of the tariff sheets for filing to become effective February 1, 1986. Transwestern states that, subsequent to the Order, a settlement was negotiated between Transwestern and other participants to the proceeding, and a stipulation and agreement was filed on January 16, 1986. It is stated that the stipulation and agreement provides for the termination of Rate Schedule CDQ-2 and the underlying contract and service agreement and for Transwestern to file for abandonment of all sales service to Northwest Central under Rate Schedule CDQ-2. It is further stated that the stipulation and agreement provides for reduction of the contract demand in the Transwestern/Northwest Central contract under Rate Schedule CDQ-3 to 127,214 dt equivalent of gas per day and for the contract underlying Rate Schedule CDQ-3 to be subject to early termination beginning February 1, 1989, upon one year's prior written notice to Transwestern, as well as the addition of Rate Schedule CDQ-2 points of delivery as additional authorized points of delivery under Rate Schedule CDQ-3.

Transwestern states that, in compliance with the stipulation and agreement, it has filed in Docket No. CP86-276-000 for authorization to abandon its sales service obligation of up to 100,000 Mcf of gas per day to Northwest Central under Rate Schedule CDQ-2 and to terminate Rate Schedule

CDQ–2 as of February 1, 1986, as agreed to in the stipulation and agreement. Transwestern also proposes to abandon partially its sales obligation to Northwest Central under Rate Schedule CDQ–3 by reducing the firm contract demand quantity to 127,214 dt equivalent of gas per day, effective as of February 1, 1986. Transwestern additionally proposes to add two delivery points to the sale to Northwest Central under Rate Schedule CDQ–2. It is stated that these new delivery points are the points of delivery that existed under Rate Schedule CDQ–2 and are located at the points of interconnection of Transwestern's and Northwest Central's facilities in the Northwest quarter of section 5, Township 27N, Range 24W in the Doby Springs field, Harper County, Oklahoma, and Section 30, Township 5N, Range 27E in the Mocane and Laverne Fields, Beaver County, Oklahoma.

Finally, Transwestern proposes that the contact and service agreement between Transwestern and Northwest Central underlying Rate Schedule CDQ–3 be subject to early termination at Northwest Central's option on February 1, 1989, February 1, 1990, or February 1, 1991, upon one year's prior written notice to Transwestern.

Transwestern states that Northwest Central has notified Transwestern that it does not desire to continue receiving service under Rate Schedule CDQ–2 and that it desires to reduce its contract quantity under Rate Schedule CDQ–3. Transwestern states that this proposal would allow Transwestern to reduce its certificate obligations to Northwest Central to a level which more accurately reflects Northwest Central's market requirements.

Transwestern states that its proposal is contingent upon Commission approval of the stipulation and agreement in Docket No. RP85–175–000. Transwestern states that, in the event that the stipulation and agreement does not become effective according to its terms, then Transwestern advises that the agreements to terminate, reduce, and otherwise revise the CDQ–2 and CDQ–3 Rate Schedules, contracts, and service agreements would no longer be valid and that this application would be rendered moot.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and 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 and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for a 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 Transwestern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2072 Filed 1–29–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140073; FRL. 2964–3]

TSCA confidential Business Information; Revised Contractor Security Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has adopted revisions to its procedures for requesting approval for contractor access to confidential business information (CBI) under the Toxic Substances Control Act (TSCA) and to its procedures for CBI handling by contractor employees. These revised procedures are set forth in a new Contractor Requirements for the Control and Security of TSCA Confidential Business Information Security Manual (Contractor Security Manual), the availability of which is announced by this notice.

DATE: The requirements of the revised Contractor Security Manual will be effectively January 31, 1986.

FOR FUTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substance, Environmental Protection Agency, Rm. E–543, 401 M. St., SW., Washington, DC 20460, Toll-Free: (800–424–9065), In Washington, DC: (544–1404), Outside the USA: (Operator–202–544–1404).

SUPPLEMENTARY INFORMATION: This notice announces the availability of a revised editor of the Contractor Security Manual. The revised Contractor Security Manual supersedes the previous edition of the Manual, which was announced in the **Federal Register** of October 8, 1981 (46 FR 49942). It describes procedures to be followed for requesting TSCA CBI access authority for contractors and subcontractors and employees of contractors and subcontractors and describes procedures to be followed by contractor and subcontractor employees in handling TSCA CBI.

In the **Federal Register** of November 14, 1985, (50 FR 47108), EPA announced the availability of a revised TSCA Confidential Business Information Security Manual for Federal Employees (Federal Employees Manual). The revised Contractor Security Manual follows closely the procedures in the Federal Employees Manual. Reference to contractors and subcontractors and the procedures for such contracts and subcontracts contained in previous editions of the Federal Employees Manual were deleted from the revised 1985 edition and now appear, where appropriate, in the revised Contractor Security Manual.

A number of changes from the 1981 edition of the Contractor Security Manual have been made as a result of EPA's continuing review of the procedures for handling TSCA CBI. These changes are designed to improve the TSCA CBI security system. Some of the changes reflect use of an automated Document Tracking System at EPA Headquarters and the possible use of such system at contractor facilities. Changes or clarifications of note include:

1. The Manual has been reformatted. Many provisions of the Manual have been rewritten to clarify language and make the description of procedures more specific.

2. EPA has clarified the steps it will take when it learns of violations of the Manual's procedures, unaccounted for

CBI documents, or unauthorized disclosures of CBI.

3. A weekly report must be prepared by Contractor Document Control Officers identifying documents that have been checked out and are overdue from a Document Tracking System.

4. The roles and duties of EPA Projects Officers and Contractor Document Control Officers have been clarified.

5. The description of procedures for performing annual inventories of CBI materials in a Document Tracking System has been expanded. Inventories must be completed by July 31 of each year.

6. The concept of "personal working papers" is introduced. Personal working papers are CBI documents that remain within the author's possession and control. They are exempt from the requirement that TSCA CBI documents be logged into a Document Tracking System.

7. Document authors may provide CBI materials to an authorized typist within the author's immediate office without logging the materials into a Document Tracking System.

8. CBI materials may be photocopied in secure storage areas or locations approved by the TSCA Security Staff.

9. CBI telephone conversations with someone outside the employee's facility must be noted in a telephone log.

10. Procedures for double-wrapping CBI materials in the possession of employees on travel have been clarified.

11. There have been several changes in terminology. "Open storage areas" are now called "secure storage areas." Persons referred to as "Document Control Assistants (DCAs)" in previous editions of the Manual are now referred to as "Document Control Officers (DCOs)." "Security IMD" is now referred to as the "TSCA Security Staff."

12. A number of forms have been modified and several new ones have been added. All forms are included as appendices to the Manual.

These and other changes are designed to improve security of TSCA CBI while recognizing EPA's need to have contractors and subcontractors work with such CBI to perform the Agency's statutory duties.

EPA is printing and distributing copies of the revised Contractor Security Manaul to affected EPA offices and contractors and subcontractors. The provisions of the revised Manual will take effect on January 31, 1986. Copies of the revised Manual are available to the public by contacting the TSCA Assistance Office at the address above.

Dated: January 24, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-2157 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Arctic Broadcasting Assoc.; et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. David A. Rawley; Anchorage, AK.	BPH-831116AJ	85-369
B. Arctic Broadcasting Association; Anchorage, AK.	BPH-831113OAA	
C. Borealis Broadcasting, Inc.; Anchorage, AK.	BPH-840223AA	
D. Alaska Northwest LTD, A Limited Partnership; Anchorage, AK.	BPH-840719IE	
E. Linda Patterson & Larry Bissey d/b/a Mat-su Broadcasting Co; Anchorage, AK.	BPH-840719IF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A,B
2. Air Hazard, A
3. Comparative, A,B,C,D
4. Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, DC 20554, Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to A (Rawley) or B (Arctic) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86-1986 Filed 1-29-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 21, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0281
Title: Section 90.651, Supplemental reports required of licensees authorized under this subpart
Action: Extension
Respondents: Licensees in the Private Land Mobile Radio Services
Estimated Annual Burden: 4,355 Responses; 727 Hours

OMB Number: 3060-0284
Title: Section 94.25(f), (g), & (i), Filing of applications
Action: Extension
Respondents: Applicants for authorizations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 25 Responses; 13 Hours

OMB Number: 3060-0272

Title: Section 94.31, Supplemental information
Action: Extension
Respondents: Applicants for authorizations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 4,300 Responses; 8,600 Hours

OMB Number: 3060–0300
Title: Section 94.107, (Private Microwave) Posting of station authorization
Action: Extension
Respondents: Stations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 4,700 Recordkeepers; 7 Hours

OMB Number: 3060–0291
Title: Section 90.477, Private land mobile interconnected systems
Action: Extension
Respondents: Licensees in the Private Land Mobile Radio Services
Estimated Annual Burden: 1,000 Recordkeepers; 1,000 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–1985 Filed 1–29–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bankvermont Corp.; Application To Engage in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1986.

A. Board of governors of the Federal Reserve System. (William W. Wiles, Secretary) Washington, DC 20551:

1. *Bank Vermont corporation,* Burlington, Vermont; to retain ownership of Future Planning Associates, Inc. and Madison Group, Inc., both of Burlington, Vermont, and thereby engage in: (a) Designing: employee benefit plans, including determining actuarial funding levels and cost estimates; (b) providing assistance in implementing plans, including assistance in the preparation of plan documents and the implementation of employee benefit administration systems; (c) developing employee communication programs with respect to plans; (d) providing administrative services with respect to plans, including record-keeping services; calculating and certifying employe benefits, and preparing periodic actuarial and other reports and government filings pursuant to ERISA; and (e) informing clients of developments in the field of employee benefit programs. These services would be provided from an office in Burlington, Vermont, serving customers nationwide.

This application may be inspected at the Federal Reserve Bank of Boston. This activity has been approved by Board Order as permissible for bank holding companies. *Norstar Bancorp, Inc.*, 71 Federal Reserve Bulletin 656 (1985).

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1987 Filed 1–29–86; 8:45 am]

BILLING CODE 6210–01–M

Interchange Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 24, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Interchange Financial Services Corporation,* Saddle Brook, New Jersey; to become a bank holding company by acquiring 100 percent of the shares of Interchange State Bank, Saddle Brook, New Jersey.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Comm. Bancorp, Inc.*, Forest City, Pennsylvania; to acquire 23.9 percent of the shares of the First National Bank of Nicholson, Nicholson, Pennsylvania.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bancorp of Rantoul, Inc.* Mahomet, Illinois; to become a bank holding company by acquiring 100 percent of the shares of Bank of Rantoul, Rantoul, Illinois.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1988 Filed 1–29–86; 8:45 am]

BILLING CODE 6210–01–M

Ormside Proprietary, Ltd. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Board indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comments 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 13, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1 *Ormside Proprietary Limited*, Melbourne, Australia; *Overseas Finance Holdings Proprietary Limited*, Melbourne, Australia; *Alyworth Proprietary Limited*, Melbourne, Australia; *Costa Mesa Limited*, London, England; *Costa Mesa Holdings N.V.*, Curacao, Netherland Antilles; *Citizens Financial Holdings B.V.*, Amsterdam, Netherlands; and *Citizens Holdings*, Brea, California; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens Bank of Costa Mesa, Costa Mesa, California.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2173 Filed 1-28-86; 3:50 pm]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget; Matrices/Color Code Identification Program for GSA Multiple Award Schedules

AGENCY: Office of Administration, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to review an existing collection in use without a control number.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Gareth G. Wells, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy, (202-566-1224).

SUPPLEMENTARY INFORMATION:

A. *Purpose.* This collection is used by Federal agencies to identify and order the lowest priced products which meet their needs.

b. *Annual reporting burden.* Respondents and responses 5,375 each; hours 2,687.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (CAID), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: January 22, 1986.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 86-1972 Filed 1-29-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration ADAMHA), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b((6) and 5 U.S.C. app. 2§ 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Neurobehavioral Research Subcommittee of the Neurosciences Research Review Committee.

Date and Time: February 6-8; 8:30 a.m.

Place: The Wellington Hotel, Suite 705, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Status of Meeting: Open—February 6; 9:00-10:00 a.m. Closed—Otherwise.

Contact: Dorothy Tengood, Room 9C26, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee.

Date and Time: February 7; 10:00 a.m.

Place: The Canterbury Hotal, 1733 N Street, NW. Washington, DC 20036.

Status of Meeting: Open—February 7; 1:30-2:30 p.m. Closed—Otherwise.

Contract: Barbara McCracken, Room 9C05, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychiatry and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

* * * * *

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee.

Date and Time: February 7-8; 9:00 a.m.

Place: the Canterbury Hotel, 1733 N Street, N.W. Washington, DC 20036.

Status of Meeting: Open—February 7; 1:30-2:30 p.m. Closed—Otherwise.

Contact: Barbara McCracken, Room 9C05, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology and the behavioral sciences, with recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

* * * * *

Committee Name: Subcommittee on Aging of the Life Course and Prevention Research Review Committee.

Date and Time: February 20-22; 9:15 a.m.

Place: The Omni Shoreham, 2500 Calvert Street, NW. Washington, DC 20008

Status of Meeting: Open—February 20; 9:15-10:30 a.m. Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Research Scientist Development Review Committee.

Date and Time: February 19; 10:00 a.m.–6:00 p.m. February 20–21; 9:00 a.m.–6:00 p.m.

Place: Omni Shoreham, 2500 Calvert Street, NW. Washington, DC 20008.

Status of Meeting: Open—February 19; 10:00–11:00 a.m. Closed—Otherwise.

Contact: Linda Rainey, Room 9C15, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support and individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee.

Date and Time: February 24; 9:15 a.m.

Place: The Omni Shoreham, 2500 Calvert Street, NW. Washington, DC 20008

Status of Meeting: Open—February 24; 9:15–10:30 a.m. Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Helth Council for final review.

* * * * *

Summaries of the meetings and rosters of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Meeting notice are late because committee members changed meeting dates.

Dated: January 24, 1986.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–1989 Filed 1–29–86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85F–0578]

EMS-CHEMIE AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that EMS–CHEMIE AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a nylon 6/69 polymer manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid for use in laminates that may contact food at temperatures not to exceed 212 °F.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Comestic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3852) has been filed by EMS–CHEMIE AG, Ch–7013 Domat/Ems, Switzerland, proposing that § 177.1390 *High-temperature laminates* (21 CFR 177.1390) be amended to provide for the safe use of a nylon 6/69 polymer manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid for use in laminates that may contact food at temperatures not to exceed 212 °F.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: January 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–1993 Filed 1–29–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N–0102]

Cumulative List of Orphan Products Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list to be updated quarterly identifying the drugs and biological products granted orphan designation in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act (see the **Federal Register** of April 13, 1984 (49 FR 14808)). By this notice, FDA is publishing a cumulative list of designated orphan drugs and biological products.

ADDRESS: A copy of the list for the current calendar year is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan designation pursuant to the interim guidelines for section 526 of the Federal Food, Drug, and Cosmetic Act (the act). In accordance with section 526 of the act, which requires public notification of designations, FDA maintains a list identifying designated orphan drugs and biological products for the current calendar year. The list is available upon request from FDA's Dockets Management Branch (address above) under docket number 84N–0102. The list is updated on a quarterly basis. The agency intends to continue to publish in the **Federal Register** at the end of each calendar year a cumulative list of designated orphan drugs or biological products, to include sponsor name and specific disease/condition, for which designations have been granted.

In the **Federal Register** of February 4, 1985 (50 FR 4914), FDA published the first cumulative list of designations. The February 4, 1985, notice listed those products designated as orphan drugs or biological products through 1984. This notice lists those products designated as orphan drugs or biological products through December 31, 1985, and, therefore, updates the February 4, 1985, publication. The designation of a drug or biological product applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan product must apply for designation for its product. Copies of the

interim guidelines for use in compiling an application for designation may be obtained from the Office of Orphan Products Development (HF–35) (address above).

Orphan Drug and Biological Product Designations thru 1985

BIOLOGICAL PRODUCT DESIGNATIONS

Name of biological product	Proposed use	Sponsor's name and address
Generic—Alpha-1-anti-trypsin (recombinant DNA origin) *Trade*—not established.	Supplementation therapy for alpha-1 antitrypsin definciency in the ZZ phenotype population.	Cooper Biomedical, Inc., 3145 Porter Dr., Palo Alto, CA 94304.
Generic—Alpha-1-proteinase inhibitor (Alpha-1 PI) *Trade*—Not established.	Replacement thereapy in the Alpha 1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—Antimelanoma antibody XMMME-001-DTPA-In_{IN} *Trade*—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastasis.	Xoma Corp., 3516 Sacramento St., San Francisco, CA 94118.
Generic—Antimelanoma antibody XMME-001-RTA *Trade*—Same as generic.	Treatment of Stage III melanoma not amenable to surgical resection.	Xoma Corp., 3516 Sacramento St., San Francisco, CA 94118.
Generic—Antithrombin III (AT-III) *Trade*—Not established.	For use as replacement therapy in congenital deficiency of AT-III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—Antithrombin III concentrate I.V. *Trade*—Kybernin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North Somerville, NJ 08876.
Generic—Antithrombin III (human) *Trade*—*Antithrombin.*	Hereditary AT-III deficiency	Kabi Vitrum Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—Botulinum A toxin *Trade*—Oculinum.	Treatment of strabismus and blepharospasm	Alan B. Scott, 2232 Webster St., San Francisco, CA 94115.
Generic—Digoxin-specific antibody fragments *Trade*—Digibind.	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Erwinia L-Asparaginase *Trade*—*Not established.*	Acute lymphoblastic leukemia	Lypho Med, Inc. 2020 Ruby St., Melrose Park, IL 60160.
Generic—Factor XIII, *Trade*—*Fibrogammin.*	Congenital Factor XIII deficiency	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic—Hemin.[1] [2] *Trade*—Panhematin.	Amelioration of recurrent attacks of acute intermittent porphyria temporally related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata, and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic—Pentastarch *Trade*—Not established.	For use an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	American Critical Care, 1600 Waukegan Rd., McGaw Park, IL 60085.
Generic—Sheep antidigoxin Fab *Trade*—Digidote.	Life-threatening acute cardiac glycoside intoxication manifested by conduction disorders, ectopic ventricular activity, and (in some cases) hyperkalemia.	Boehringer Mannhein Corp., 1301 Piccard Dr. Rockville, MD 20850.

[1] Approved for marketing.
[2] Exclusive approval.

DRUG PRODUCT DESIGNATIONS

Name of drug product	Proposed use	Sponsor's name and address
Generic—Allopurinol riboside *Trade*—Not established.	Treatment of Cutaneous and visceral leishmaniasis and Chagas' disease.	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Amsacrine *Trade*—Amsidyl.	Treatment of patients with acute adult leukemia	Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
Generic—Anagrelide *Trade*—Not established.	Treatment of poly-cythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—Antipyrine *Trade*—Not established.	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, Inc., 14905 23d Ave. North, Minneapolis, MN 55441.
Generic—Bacitracin, U.S.P. *Trade*—Not established.	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A and B elaborated by *Clostridium difficile.*	A.L. Laboratories, Inc., 452 Hudson Terrace, P.O. Box 1621 Englewood Cliffs, NJ 07632.
Generic—BW A509U *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS)	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—BW B759U *Trade*—Not established.	Treatment of severe human cytomegalo-virus infections (HCMV) in specific immunosuppressed patient populations (e.g., bone marrow transplant recipients and AIDS).	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Chenodiol.[1] [2] *Trade*—Chenix.	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Rowell Laboratories, Inc., 210 Main St. West, Baudette, MN 56623.
Generic—Clofazimine *Trade*—Lamprene.	Treatment of leprosy resistant to Dapsone and the ENL and lepra reaction.	Pharmaceuticals Division, Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.
Generic—Clofazimine *Trade*—Not established.	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis.	Pharmacontrol Corp., P.O. Box 931, 661 Palisade Ave., Englewood Cliffs, NJ 07632.
Generic—Cromolyn Sodium *Trade*—Cromoral.	Mastocytosis	Fisons Corp., 2 Preston Ct., Bedford, MA 01730.
Generic—Cromolyn Sodium 4% ophthalmic solution *Trade*—Opticrom 4% Ophthalmic Solution.[1]	Treatment of vernal keratoconjunctivitis (VKC)	Fisons Corp., 2 Preston Ct., Bedford, MA 01730.
Generic—Cyproterone acetate *Trade*—Cyproteron/Androcur.	Treatment of severe hirsutism	Berlex Laboratories, Inc., 110 East Hanover Ave., Cedar Knolls, NJ 07927.
Generic—Diaziquone *Trade*—Not established.	Treatment of primary brain malignancies (Grade III–IV astrocytomas.	Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
Generic—Defibrotide *Trade*—Not established.	Treatment of thrombotic thrombocytopenic purpura	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic—Epoprostenol prostacyclin, PGI_2, PGX *Trade*—Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Epoprostenol *Trade*—Cyclo-Prostin.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta St., Kalamazoo, MI 49001.
Generic—Epoprostenol, prostacyclin, PGI_2, PGx *Trade*—Flolan.	For use in the treatment of primary pulmonary hypertension (PPH).	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Ethanolamine oleate *Trade*—Not established.	Bleeding esophageal varices	Glaxo, Inc., P.O. Box 13960, Five Moore Dr., Research Triangle Park, NC 27709.
Generic—Flumecinol *Trade*—Zixoryn.	Hyperbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586, Westport, CT 06881.

DRUG PRODUCT DESIGNATIONS—Continued

Name of drug product	Proposed use	Sponsor's name and address
Generic—Glucocere-brosidase/beta-glucosidase (placenta-derived). *Trade*—Not established.	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corp., 75 Kneeland St., Boston, MA 02111.
Generic—HPA-23 *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS)	Rhone-Poulenc Pharmaceuticals, Division of Rhone Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
Generic—Hexamethyl-melamine *Trade*—Hexastat.	Treatment of advanced adenocarcinoma of the ovary	Ives Laboratories, 685 Third Ave., New York, NY 10017.
Generic—Human epidermal growth factor (urogastrone) *Trade*—Not established.	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Human epidermal growth factor (urogastrone) *Trade*—Not established.	Promotion of cutaneous wound healing in extreme burn treatment protocols.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Human superoxide dismutase (hSOD) *Trade*—Not established.	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Hydroxyco-balamin/sodium thiosulfate *Trade*—Not established.	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.
Generic—Ifosfamide *Trade*—Not established.	Treatment of soft tissue and bone sarcomas	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—L-alpha-acetyl-methadol (LAAM) *Trade*—Not established.	Treatment of heroin addicts suitable for maintenance on opiate agonists.	Dixon and Williams Pharmaceutical Co., Inc., 43 Old Wood Rd., Bernardsville, NJ 07924.
Generic—L-carnitine *Trade*—Not established.	Genetic carnitine deficiency	American McGaw, Division of American Hospital Supply Corp., 2525 McGaw Ave., Irvine, CA 92714.
Generic—L-carnitine.[1] [2] *Trade*—Not established.	Primary and secondary carnitine deficiency of genetic origin	Sigma Tau, Inc., 723 North Beers St., Holmdel, NJ 07733.
Generic—L-5 Hydroxy-tryptophan (L-5HTP) *Trade*—Not established.	Treatment of postanoxic intention myoclonus	Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.
Generic—Mesna *Trade*—Uromitexan.	For use in inhibiting the urotoxic effects induced by ifosfamide	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—Methotrexate sodium. *Trade*—Methotrexate.	Treatment of osteogenic sarcoma	Lederle Laboratories, Pearle River, NY 10965.
Generic—Midodrine HC1 *Trade*—Midamine.	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, Inc., 230 Half Mile Rd., Red Bank, NJ 07701.
Generic—Monoclonal Antiendotoxin Antibody XMMEN-0E5 *Trade*—Same as generic.	Treatment of patients with gram-negative sepsis which has progressed to shock.	Xoma Corp., 2910 Seventh St., Berkeley, CA 94710.
Generic—Monooctanoin *Trade*—Moctan.[1] [2]	Dissolution of cholesterol gallstones retained in the common bile duct.	Ascot Pharmaceuticals, Inc., 7701 North Austin Ave., Skokie, IL 60077.
Generic—Naltrexone HC1 *Trade*—Trexan.[1] [2]	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I. du Point De Nemours, Inc., dba Du Pont Pharmaceuticals, 1000 Stewart Ave., Garden City, NY 11530.
Generic—Oxzymorphone HC1 *Trade*—Numorphan H.P.	Relief of serve intractable pain in narcotic-tolerant patients	Du Pont Pharmaceuticals, Inc., P.O. Box 12, Manati, Puerto Rico 00701.
Generic—PEG-adenosin deaminase (PEG-ADA) *Trade*—Imudon.	For use as enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
Generic—Pentamidine isethionate *Trade*—Pentam 300.[1] [2]	Pneumocystis carinii pneumonia	LyphoMed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
Generic—Pentamidine isethionate *Trade*—Not established.	Pneumocystis carinii pneumonia	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—Physostigmine salicylate *Trade*—Antilirium.	Friedreich's and other inherited ataxias	Forrest Pharmaceuticals, Inc., 2510 Metro Blvd., Maryland Heights, MO 64043-99.
Generic—Potassium citrate *Trade*—Urocit-K.[1] [2]	Prevention of calcium stones in patients with hypocitraturia and for the avoidance of the complication of calcium stone formation in patients with uric lithiasis.	Charles Y. C. Pak, The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—Potassium citrate *Trade*—Urocit-K.[1] [2]	Prevention of uric acid nephrolithiasis	Charles Y. C. Pak, The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—Prehnimustine *Trade*—Sterecyt.	Treatment of malignant non-Hodgkin's lymphomas	Smith Kline and French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.
Generic—Quinacrine HC1 *Trade*—Not established.	For use in the prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
Generic—RS 21 592-000 (DHPG) *Trade*—Not established.	Treatment of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immuno-compromised patients.	Syntex (USA), Inc., 3401 Hillview Ave., Palo Alto, CA 94304.
Generic—Rifampin *Trade*—Rifadin I.V.	For use as anti-tuberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Pharmaceuticals, 2110 East Galbraith Rd., Cincinnati, OH 45215.
Generic—Rifampin, isoniazid, pyrazinamide *Trade*—Rifater V.	Short course treatment of tuberculosis	Merrell Dow Research Institute, 2110 East Galbraith Rd., Cincinnati, OH 45215.
Generic—Selegiline HC1 *Trade*—Deprenyl.	Adjuvant to levodopa or levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism.	S.C. Johnson and Son, Inc., 1525 Howe St., Racine, WI 53403-5011.
Generic—Sodium gamma hydroxybutyrate (GHB) *Trade*—Not established.	Narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations, and automatic behavior.	Sigma F and D Division, Ltd., Sigma Chemical Co., 3050 Spruce St., St. Louis, MO 63103.
Generic—Sodium monomercapto-undecahydro-*closo*-dodecaborate. *Trade*—Borolife.	Treatment of glio-blastoma multiforme as an alternative to conventional photon therapy.	Nuclear Medicine, Inc., 900 Atlantic Dr. NW., Atlanta, GA 30332.
Generic—Sodium pentosan polysulphate *Trade*—Elmiron.	Treatment of interstitial cystitis	Pharmacia, Inc., 800 Centennial Ave., Piscataway, NJ 08854.
Generic—Somatrem.[1] [2] *Trade*—Protropin.	For long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—Somatrem *Trade*—Protropin.	Short stature associated with Turner's syndrome	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—Spiramycin *Trade*—Rovamycine.	For use in the symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—Surface active extract of saline lavage of bovine lungs. *Trade*—Infasurf.	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	ONY Inc., TDC Incubation Center, 2211 Main St., Buffalo, NY 14214.
Generic—Teniposide (VM-26) *Trade*—Not established.	Treatment of refractory childhood acute lymphocytic leukemia (ALL).	Bristol-Myers Co., Pharmaceutical Research and Development Division, P.O. Box 4755, Syracuse, NY 13221-4755.

DRUG PRODUCT DESIGNATIONS—Continued

Name of drug product	Proposed use	Sponsor's name and address
Generic—Thymone (TRH) *Trade*—Protirelin.	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064.
Generic—Tranexamic acid *Trade*—Cyklokapron.	Treatment of hereditary angioneurotic edema and for patients with congenital coagulopathies who are undergoing surgical procedures, e.g., dental extractions.	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—Tretinoin *Trade*—Not established.	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctive and/or cornea) with mucous deficiency and keratinization.	S.C.G. Tseng, M.D., Ph.D., Eye Research Institute of Retina Foundation, 20 Staniford St., Boston, MA 02114.
Generic—Trientine HC1 *Trade*—Cuprid.[1] [2]	Treatment of patients with Wilson's disease who are intolerant or inadequately responsive to penicillamine.	Merck Sharp and Dohme Research Laboratories, Division of Merck and Co., Inc., West Point, PA 19486.
Generic—Trimetrexate glucuronate *Trade*—Not established.	Treatment of metastatic colorectal adenocarcinoma, metastatic carcinoma of the head and neck (i.e., buccal cavity, pharynx, and larynx), and pancreatic adenocarcinoma.	Warner-Lambert Co., 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
Generic—Viloxazine hydrochloride *Trade*—Vivalan.	Treatment of narcolepsy and cataplexy	Stuart Pharmaceuticals, Division of ICI Americas Inc., Wilmington, DE 19897.
Generic—Zinc acetate *Trade*—Not established.	For use in the treatment of Wilson's disease	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
Generic—^{131}I-Meta-iodobenzylguanidine *Trade*—Not established.	Diagnostic adjunct in patients with pheochromocytoma	William H. Beierwaltes, Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 East Ann St., Ann Arbor, MI 48109.
Generic—^{131}I-6β-Iodomethyl-19-norcholesterol *Trade*—Not established.	Adrenal cortical imaging	William H. Beierwaltes, Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 East Ann St., Ann Arbor, MI 48109.
Generic—2,3-Dimercaptosuccinic Acid (DMSA) *Trade*—Not established.	Treatment of lead poisoning in children	Johnson and Johnson, Baby Products Co., Grandview Rd., Skillman, NJ 08858.

[1] Approved for marketing.
[2] Exclusive approval.

Dated: January 23, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1994 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Certain Parenteral Multivitamin Products; Withdrawal of Approval of Pertinent Parts of a New Drug Application

Correction

In FR Doc. 86-30550, beginning on page 53014 in the issue of Friday, December 27, 1985, make the following corrections: On page 53014, in the middle column, in the paragraph headed "Summary", the initials at the end of the fifth line should read "USV" and the first word in the last line of the paragraph should read "reformulation".

BILLING CODE 1505-01-M

Public Health Service

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of Pub. L. 92-463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress: Health Services Research and Developmental Grants Review Committee, Health Care Technology Study Section.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 AM and 4:30 PM at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, Southwest, Washington, D.C. 20201, telephone (202) 245-6791. Copies may be obtained from Mr. John D. Gallicchio, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Dated: January 23, 1986.

John E. Marshall, Ph.D.,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-2058 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-17-M

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Executive Subcommittee of the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, February 5, 1986 from 4:00 p.m. to 6:00 p.m. in Room 405A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Executive Subcommittee will review future workplans for the National Committee on Vital and Health Statistics.

Further information regarding the Subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: January 22, 1986.

Robert A. Israel,

Acting Director, National Center for Health Statistics.

[FR Doc. 86-2059 Filed 1-29-86; 8:45 a.m.]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Inspector General

[Docket No. N-86-1578; FR-2169]

Privacy Act; Program of Matching for HUD Rehabilitation Loan Debtors

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of Matching Program—HUD Rehabilitation Loan Debtors.

SUMMARY: In accordance with the Privacy Act of 1974, and the Office of Management and Budget's Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982), the Department is issuing public notice of its intent to conduct a computer matching program. Under the program, HUD's Office of Inspector General will conduct or directly supervise computer matches of data on debtors having defaulted notes under

section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) [HUD/DEPT–29 Rehabilitation Grants and Loan Files] against systems of records of current employees and retirees provided by the Office of Personnel Management, the United States Postal Service and the Department of Defense. The purpose of the program is to obtain salary and benefit attachments to discharge debts owed to the Federal government. A report on the design of the matching program is set forth in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Steven A. Switzer, Office of Inspector General, Room 8284, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–6364. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information supplied below is required by paragraph 5.f.1. of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). In accordance with the Revised Supplemental Guidance, copies of this report are being sent to the Office of Management and Budget and both Houses of Congress.

This matching program is exempt under 24 CFR 50.20(k) from the requirements for an environmental review under the National Environmental Policy Act 42 U.S.C. 4321.

Dated: January 24, 1986.

Paul A. Adams,

Inspector General.

Report of a Matching Program Department of Housing and Urban Development Rehabilitation Loan Debtors

A. *Authority:* The matching program will be conducted under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b); and debt collection provisions at 31 U.S.C. 3701, 3711, 3716, and 3718 and 5 U.S.C. 5514.

B. *Purpose:* This matching program will identify debtors with section 312 defaulted loans who are United States government or postal service employees or retirees. The purpose of the match is to discharge debts owed to the United States government through salary and benefit offsets.

HUD's Office of Inspector General will conduct or directly supervise the match of the Department's existing system of records (HUD/DEPT–29 Rehabilitation Grants and Loan Files) with systems of records provided by the Office of Personnel Management (OPM), the United States Postal Service USPS) and the Department of Defense (DOD). The OPM systems of records to be used are the General Personnel Records (OPM/GOVT–1) and the Civil Service Retirement and Insurance Records (OPM/CENTRAL–1). The USPS system of records to be used is the Records-Payroll System (USPS–050.020). The DOD system of records to be used is the Defense Manpower Data Center Database (S322.10, DLA–LZ).

Routine uses of the agencies' automated files are provided at 50 FR 18933, 18935 (May 3, 1985) (HUD/Dept–29); 49 FR 36949, 36954–57 (September 20, 1984) (OPM/GOVT–1); 49 FR 36949, 36950–52 (September 20, 1984) (OPM/Central–1); 49 FR 30834, 30852–54 (August 1, 1984) (S322.10 DLA–LZ); and 50 FR 28862 (July 16, 1985) (USPS 050.020).

After the Department has obtained a match, HUD will verify each debt. In those cases involving a current or former employee of the U.S. Government or postal service who does not have a current repayment plan for a defaulted Section 312 note, the Department intends to arrange attachment of salary or benefit payments in order to discharge the debt, if some other repayment plan cannot be arranged after first consulting the debtor.

C. *Period of Match:* The matching program will begin in the second quarter of Fiscal Year 1986 and will be continuing. Follow-up work on resultant matches is expected to be completed within 6 months after completion of each match.

D. *Security:* To protect the identity of debtors, HUD will restrict access to both the information provided by other sources for the purpose of the matching program and the resulting case match data. The following measures will be taken to assure compliance with the Privacy Act:

If HUD performs the computer match, it will agree in writing to conditions listed below governing the use of information from another source. If another government agency performs the match, HUD will require the agency to agree in writing to the conditions listed below governing the use of both the source data provided by HUD and the case match data. This agreement will be executed before HUD discloses to that agency data from its machine-readable debtor files.

The conditions included for the written agreements will include that:

(1) The files to be matched will remain the property of the original sources and will be returned or destroyed at the end of a particular matching program;

(2) The agency performing the match will take sufficient physical, technical and administrative safeguards to maintain reasonable security over data in its possession provided for the match and over data created as a result of a particular matching program;

(3) The records will be used and accessed only to match the file(s) previously agreed to;

(4) The agency performing the match will not use the records to extract information for any purpose concerning individuals who were not a case match;

(5) Machine-readable matching files and any printed form of the data on these files will not be duplicated or disseminated within the agency performing the match for purposes other than the matching program or outside the agency for any purpose, unless authorized by the original source; and

(6) When the debtor data and case match data is used for statistical purposes, all personnel identifiers will be deleted.

Records created from the computer matching program (case matches and follow-up data) will be included in the "Investigation Files, HUD/DEPT–24" category. Routine uses of these files are described in 48 FR 10372 (March 20, 1984).

F. *Disposition of Records:* Upon completion of the match and related follow-up work, all source data received for this matching will be return to the appropriate government agencies or destroyed. Case match data records will be kept by HUD only so long as administrative investigation is active and will be disposed of in accordance with the requirements of the Privacy Act of 1974 and the Federal Records Schedule.

[FR Doc. 86–2038 Filed 1–29–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C—40672]

Emergency Coal Lease Re-Offering by Sealed Bid; Colorado

U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

Notice is hereby given that certain coal resources in the lands hereinafter described in Routt County, Colorado will be re-offered for competitive lease by sealed bid. On December 19, 1985, these resources were offered for competitive lease by sealed bid to the qualified bidder of the highest cash

amount provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Cyprus Western Coal Company was the only bidder. The bid submitted was in the amount of $375.00 per acre for a total of $392,250.00. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected. This re-offering is made as a result of a re-filing of the emergency application by Cyprus Western Coal Company. The sale will be held at 2:00 p.m., March 6, 1986 in the Eleventh Floor Conference Room at the above address.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the coal resource. The minimum bid is $100 per acre, or fraction thereof. No bid less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., March 6, 1986, to the Colorado State Office, 1037 20th Street, Denver, Colorado 80202. Bids received after that time will not be considered.

Coal Offered: The coal resource to be offered is limited to coal recoverable by surface mining methods from the Wadge and Wolf Creek Seams in the following lands located approximately 17 miles southwest of Steamboat Springs, Colorado:

Township 4 North, Range 86 West, 6th P.M.,
Sec. 19, all that part of the W½ lot 11 and of lot 12 lying south of a line beginning at the southwest corner of lot 12 of Sec. 19, thence N. 53° 29' E. to the west boundary of the E½ lot 11 of said section and lots 13 and 14; *and that portion of lands lying below the bottom of the Wadge coal seam* in the E½ lot 11 and that part of the NW¼ lot 11 and of lot 12 lying north of the line previously described;
Sec. 30, lots 3 and 4.
Township 4 North, Range 87 West, 6th P.M.,
Sec. 23, S½S½NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, SE¼NE¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 24, all the S½S½NW¼NW¼, S½N½S½S½, S½S½S½, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying south of a line beginning at the southwest corner of the N½N½SE¼SE¼ of Sec. 24, thence N. 63° 16' E. approximately 1473 feet to the northeast corner of the S½S½NE¼SE¼ of said section; *and that portion of lands lying below the bottom of the Wadge coal seam* in the SW¼NW¼, S½S½NE¼SW¼, NW¼SW¼, N½N½S½SW¼, S½N½NE¼SE¼, N½S½NE¼SE¼, S½S½NW¼SE¼, N½N½SW¼SE¼, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying north of the line described herein;
Sec. 25, N½N½, N½N½SW¼NE¼, N½N½SE¼NE¼, N½SW¼NW¼, and N½N½SE¼NW¼;
Sec. 26, N½NE¼NE¼, SE¼NE¼NE¼, N¼NW¼NE¼, NE¼SE¼NE¼, and NE¼NE¼NW¼.

The 1045.90-acre tract contains an estimated 12,310,700 tons of recoverable coal.

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal produced. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Colorado State Office. Case file documents are also available for public inspection at that office.

Richard E. Richards,

Acting Chief, Mineral Leasing Section.

[FR Doc. 86-1995 Filed 1-29-86; 8:45 am]

BILING CODE 4310-JB-M

[A-20229]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Charles Edward Towner, 400 Heather Drive, Sierra Vista, Arizona 85635 has purchased by direct sale, at the fair market value of $40,252.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridian, Arizona

T. 23 S., R. 20 E.,
Section 1, SW¼SW¼.
Containing 40.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-1996 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-32-M

[A-18822-H]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Alice S.L. Soong, 1765 Oakwood Avenue, Arcadia, California 91006, has purchased by competitive sale, at the fair market value of $12,050.00, public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 18 W.,
Section 34, NW¼.
Containing 160.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-1997 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-32-M

[A-20632]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Marcellus W. DuBois and Eva F. DuBois, P.O. Box 897, Willcox, Arizona 85643, have purchased by direct sale, at the fair market value of $8,950.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 24 E.,
Section 31, lots 6 and 11.
Containing 81.01 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-1998 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-32-M

Intent to Prepare an Environmental Impact Statement; Teton County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Bureau of Land Management will prepare an environmental impact statement (EIS) concerning the continuation of development of a gas field about 20 miles northwest of Choteau, Montana. In Teton County, the area to be analyzed in the EIS includes approximately 40,370 acres of Federal mineral estate. The U.S. Forest Service will be a cooperating agency. The State of Montana Department of Fish, Wildlife and Parks will provide a team member.

DATE: Comments should be submitted by March 15, 1986.

ADDRESS: Contact Blackleaf Project Office, Bureau of Land Management, Great Falls Resource Area, Drawer 2865, Great Falls, Montana 59403.

SUPPLEMENTARY INFORMATION: Alternatives will include No Action and a range of development scenarios that are responsive to issues raised. Major issues are threatened and endangered species, big game animals and associated recreation, economic consideration of development and existing activity.

Dated: January 22, 1986.

Glenn W. Freeman,

District Manager.

[FR Doc. 86-1999 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-DN-M

[CA-17695]

Exchange of Public Lands in San Diego, County and Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: CA 17695, Amendment of Notice of Realty Action; Exchange of Public Lands in San Diego County and Riverside County, California.

SUMMARY: This document amends and corrects a Notice of Realty Action published in the **Federal Register** on December 27, 1985 (50 FR 53021-22). The notice concerned an exchange of public lands in San Diego County, California. The legal description of those lands included T.17S., R.1E., SBM., Section 29; W½, W½SE¼. The correct description of the public land in Section 29 is the W½SE¼ only (80 acres).

The notice of December 27, 1985, is hereby amended to include additional public and private lands in the exchange. The additional public lands to be traded are located in San Diego and Riverside Counties. These lands were previously identified for disposal by sale in 50 FR 23770-23774, with the provision that unsold parcels would be available for Bureau—benefitting land exchanges. No bids were received for these parcels during the sale period. These lands will therefore be part of the exchange with the Trust for Public Land described in 50 FR 53021-53022. The United States will receive additional private lands around Eagle Lake, in Lassen County, California, and in the Western Otay Mountain Wilderness Study Area, in San Diego County, California.

The additional public lands to be exchanged are as follows:

a. *Riverside County*

San Bernardino Meridian, California

T. 8 S., R. 1 E.
Sec. 10; Lots 3 and 4;
Sec. 15; Lots 1-5, 7, 8 and 12;
Sec. 16; E½;
Sec. 17; SE¼SE¼;
Sec. 20; NE¼, E½NW¼, NW¼SE¼;
Sec. 21; N½, N½SW¼, SE¼.

b. *San Diego County*

San Bernardino Meridian, California

T. 10 S., R. 3 W.
Sec. 33; NW¼NW¼.
Containing 40 acres.

There will be reserved to the United States in these public lands a right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945). The geothermal resources will also be reserved to the United States, but only on the lands in T. 8 S., R. 1 E., SBM, described above, in Riverside County.

The publication of this amended notice in the **Federal Register** segregates the public lands described herein from all other forms of appropriation and entry under the public land laws, including the mining laws, for a period of two years from the date of publication of this amendment.

The additional private lands to be acquired are as follows:

a. *Lassen County, Eagle Lake*

Mt. Diablo Meridian, California

T. 33 N., R. 11 E.
Sec. 21; Portions of Lot 1;
Sec. 28; Portions of Lots 1, 2, 3 and 5;
Sec. 27; Lot 2.

b. *San Diego County, Western Otay WSA*

San Bernardino Meridian, California

T. 18 S., R. 2 E.
Sec. 19, E½E½;
Sec. 20, W½W½;
Sec. 29; W½W½;
Sec. 30; E½E½.

The United States will acquire fee title to these lands in this exchange.

DATE: For a period of 45 days from the date of publication of this amended notice in the **Federal Register**, interested parties may submit comments to the Deputy State Director, Division of Operations, California State Office of the Bureau of Land Management.

ADDRESS: Comments should be sent to: Deputy State Director (CA-943.1), Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825. (Reference exchange number CA-17695.) Objections will be evaluated by the California State Director of the Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Peter Humm or Jacqueline Gratton, Susanville District Office, 705 Hall St., Susanville, CA 96130, at (916) 257-5381.

Dated: January 24, 1986.

Bruce P. Conrad,

Deputy State Director, Division of Operations.

[FR Doc. 86-2000 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Proposed Exchange in Itasca County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Exchange ES-32999.

SUMMARY: The following 629.12 acres of BLM administered public lands have been found suitable for exchange under section 206(c) of the Federal Land Policy and Management Act of 1976 (43 USC 1716):

4th P.M.

T.54 N., R.23 W.,
Sec. 4: Lots 1, 2, 3, 4.
T.59 N., R.22 W.,
Sec. 3: SE¼SE¼.
T.61 N., R.22 W.,
Sec. 21: SW¼SW¼;
Sec. 26: SW¼SE¼;
Sec. 33: W½SE¼, NE¼SE¼;
Sec. 34: SE¼NE¼, N½SW¼, SE¼SW¼, W½SW¼.
T.61 N., R.23 W.,
Sec. 35: NW¼SW¼.

Itasca County is offering the following 888.44 acres of non-Federal lands in exchange:

4th P.M.

T.57 N., R.26 W.,
Sec 9: NW¼SW¼, SW¼SE¼;
Sec. 17: NW¼NW¼.
T.58 N., R.25 W.,
Sec. 11: SW¼SE¼.
T.58 N., R.26 W.,
Sec. 1: Lot 1.

T.58 N., R.27 W.,
Sec. 3: SW¼NE¼.
T.59 N., R.26 W.,
Sec. 27: NW¼NW¼.
T.59 N., R.27 W.,
Sec. 23: SE¼SW¼;
Sec. 35: SW¼NW¼.
T.60 N., R.27 W.,
Sec. 2: Lot 2, 8, 9;
Sec. 3: Lot 11;
Sec. 13: NW¼SE¼;
Sec. 22: NE¼NE¼;
Sec. 23: NW¼NW¼.

5th P.M.

T.148 N., R.25 W.,
Sec. 14: NW¼NW¼;
Sec. 31: SE¼NW¼.
T.149 N., R.26 W.,
Sec. 13: NW¼SW¼.

including the railroad grades across the following lands:

4th P.M.

T.58 N., R.27 W.,
Sec. 1: S½SW¼;
Sec. 14: E½SW¼, W½SE¼;
Sec. 23: NE¼NW¼;
Sec. 35: E½NW¼, SW¼SW¼.
T.59 N., R.26 W.,
Sec. 19: W½SE¼;
Sec. 30: Lot 3.
T.59 N., R.27 W.,
Sec. 25: N½SW¼, NE¼SE¼;
Sec. 26: SW¼NW¼.

5th P.M.

T.147 N., R.25 W.,
Sec. 1: Lot 5.
T.148 N., R.25 W.,
Sec. 1: Lot 5.
T.148 N., R.25 W.,
Sec. 5: SW¼SW¼;
Sec. 6: NE¼SE¼;
Sec. 8: SW¼NW¼;
Sec. 17: E½NE¼, NE¼SE¼;
Sec. 21: NW¼NW¼;
Sec. 27: Lot 1, 2;
Sec. 28: Lot 1.
T.149 N., R.25 W.,
Sec. 31: Lot 2, 3, NE¼SW¼.

The purpose of the exchange is to acquire non-Federal lands within the Chippewa National Forest in order to consolidate ownership, eliminate isolated holdings and facilitate more efficient management. After acquisition of these lands BLM will transfer jurisdiction to the Department of Agriculture, Forest Service. The exchange is consistent with BLM's land use plans. The value of the lands are approximately equal. The acreage may be adjusted or money used to equalize values, if necessary. Title to both the BLM and non-Federal lands will be issued subject to valid existing rights and a reservation of minerals.

Upon publication of this Notice, the BLM lands will be segregated from all appropriations under the public land laws, except exchange, for a period of two (2) years, or upon issuance of patent, whichever occurs first.

Comments: For a period of 45 days from the publication of this Notice interested parties may submit comments to: District Manager, Milwaukee District Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the State Director who may vacate or modify this decision. In the absence of any action by the State Director this Realty Action will become the final determination of the Department of the Interior.

Detailed information concerning this exchange is available for review at the Chippewa National Forest Supervisor's Office, Rural Route Box 244, Cass Lake, Minnesota 56633 and at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 or by calling Priscilla McLain at (414) 291–4427.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 86–2001 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-GJ-M

[OR 19474]

Oregon; Boardman Bombing Range Land Withdrawal; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A public meeting has been scheduled for March 25, 1986, to provide an opportunity for public involvement regarding the Navy's proposal to continue the Boardman Bombing Range land withdrawal.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Officer, P.O. Box 2965, Portland Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the Department of Navy's proposal to continue the land withdrawal for 25 years as to 37,400.31 acres of public domain lands within the Naval Weapons Systems Training Facility, Boardman, also known as the Boardman Bombing Range, Morrow County, Oregon.

The meeting will begin at 7 pm, Tuesday, March 25, 1986, in the auditorium of Riverside High School, 210 Boardman Avenue, N.E., Boardman Oregon. The agenda will include (1) an information briefing by the Bureau of Land Managment, (2) an information briefing by the Navy, (3) oral statements by interested parties, and (4) question and answer period. The duration of the meeting will be approximately two hours.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the future status of the land withdrawal is submitted to the Secretary of Interior, the President, and Congress for final action under the withdrawal review authority of section 204(1) of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579).

Dated: January 22, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–2005 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-33-M

Rules of Conduct and Supplemental Rules, California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of developed recreation areas and establishment of supplementary rules.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of person, property, and public lands and resources. More specifically the purposes fall into the following categories:

a. *Implementation of Management Plans*—Certain prohibited activities have been recommended in resource management plans for Areas of Critical Environmental Concern, Habitat Management Areas, and Resource Management Areas. Plan amendments and recommendations are not enforceable as published. In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the supplemental rules section of 43 CFR subpart 8365, is the most appropriate way of implementing these recommendations. Rationale for these recommendations are presented in their entirety in the final management plan for the specific area.

b. *Mitigation of User Conflict*—Certain other supplementary rules are recommended because of specific user conflict problems in the field. Prohibiting the reservation of camping space in

developed campgrounds will allow such space to be available on first come, first serve basis. This will prevent a few persons from monopolizing the use of limited developed camping space. Motorized vehicle freeplay is recommended as a prohibited act to minimize the noise and nuisance factor that such activity represents in a developed recreation site.

The comment section of the Final Rule Making for 43 CFR subpart 8365 recommends that if such prohibition is necessary that it should be implemented in the form of a specific supplementary rule.

c. *Public Health and Safety*—The landing and taking off of aircraft within our developed recreation sites has been an historic problem in the CDD. Although this practice has not yet caused any incidents of injury or death, the potential continues to exist. Also, the erection and maintenance of temporary toilet facilities on the public lands represents a major threat to public safety due to the concentration of human wastes. We wish to deal with this on a case by case basis and only when appropriate state and local permits have been obtained.

It should be noted that all of the shooting restrictions recommended, *do not* prohibit legitimate hunting activities, and therefore do not conflict with State Fish and Game Regulations. The degree to which these rules will be enforced will not defer from normal patrol procedures. As always, violations will be handled by rangers on a case by case basis. Recreational shooters will be encourage to use public lands where such shooting restrictions do not apply. Shooting conflict is an issue that was specifically addressed in the Desert Plan, yet remains one of our greatest resource destruction, user conflict, and citizen complaint problems.

d. *Complimentary Rules*—Some supplementary rules are recommended to compliment those of state and local agencies. Because these rules provide for the protection of persons and resources and in the interest and spirit of cooperation with the responsible agencies, these supplementary rules are deemed necessary. This includes limiting shooting in the southern Barstow Resource Area to shotgun only as required by San Bernardino County ordinance, and the prohibition of camping at wildlife watering places as provided by Title 14 of the California Administrative Code, Fish and Game Commission, section 730.

The following areas are designated developed recreation sites and areas for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

Area	Type	Location
1. desert Tortoise	Area of critical environmental concern	T. 30 S., R. 38 E., (MDM); Sec. 24, 26, 34. T. 31 S., R. 38 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34. T. 32 S., R. 38 E., (MDM); Sec. 4, 6.
2. Rainbow Basin/Owl Canyon	Area of critical environmental concern	T. 11 N., R. 1 W., (SBM); Sec. 18, 19, 20, 30. T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
3. Calico Early Man Site	Area of critical environmental concern	T. 10 N., R. 2 E., (SBM); Sec. 15, 22.
4. Ft. Soda	Area of critical environmental concern	T. 12 N., R. 8 E., (SBM); Sec. 2, 3, 10, 12, 14, 15, 22, 23. T. 13 N., R. 8 E., (SBM); Sec. 26, 27, 34, 35
5. Afton Canyon	Area of critical enviromental concern, campground	T. 11 N., R. 5 E., (SBM); Sec. 14, 24. T. 11 N., R. 6 E., (SBM); Sec. 14, 15, 18, 20, 22, 28.
6. Hole-in-the-Wall	Campground	T. 11 N., R. 15 E., (SBM); Sec. 7, 8, 17, 18.
7. Midhills	Campground	T. 12 N., R. 14 E., (SBM); Sec. 12, 13.
8. Corn Springs	Area of critical environmental concern, campground	T. 6 S., R. 15 E., (SBM); Sec. 22, 23, 24. T. 6 S., R. 16 E., (SBM); Sec. 19, 20, 21, 22, 26, 27, 28, 29, 30.
9. Gecko	Recreation area	T. 14 S., R. 17 E., (SBM); Sec. 1. T. 14 S., R. 18 E., (SBM); Sec. 1, 7, 8, 17, 18, 20, 21, 41.
10. Lark Canyon	Campground	T. 17 S., R. 7 E., (SBM); Sec. 4.
11. Cottonwood	Campground	T. 15 S., R. 6 E., (SBM); Sec. 34, 35. T. 16 S., R. 6 E., (SBM); Sec. 2, 3.

In addition to the regulations contained in 43 CFR 8365.2 the following supplemental rules will apply to the developed recreation sites listed above:

1. Reserving camping space is prohibited. Camping space will be allocated on a first come, first served basis.

2. Motorized vehicle freeplay is prohibited. Motorized vehicles will be used for access to and from the campsite only.

3. Equestrian use is subject to authorization by the local Area Manager.

4. Taking off or landing of aircraft, including ultra-lites, is prohibited.

Other supplementary rules applicable to all public lands of the California Desert District are as follows:

1. Camping or occupying between 10 p.m. and 6 a.m. is prohibited in:

Area	Type	Location
1. Throughout CA Desert District	Wildlife watering places	Camp or occupy for more than 30 minutes within 200 yards of any waterholes, springs, seeps, and man-made watering devices for wildlife such as guzzlers, horizonal wells and small impoundments of less than one surface acre in size.
2. Eureka Valley (except in designated places)	Area of critical environmental concern	T. 10 S., R. 39 E., (MDM); Sec. 1, 2, 11, 12, 13, 14, 23, 24.
3. Saline Valley (except in designated places)	Area of critical environmental concern	T. 13 S., R. 37 E., (MDM); Sec. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35. T. 14 S., R. 37 E., (MDM); Sec. 2, 3, 4, 5, 9, 10, 15, 22, 26, 27, 35.
4. Darwin Falls (except in designated places)	Area of critical environmental concern	T. 18 S., R. 41 E., (MDM); Sec. 25, 26, 27, 34, 35.
5. Surprise Canyon (except in designated places)	Area of critical environmental concern	T. 19 S., R. 41 E., (MDM); Sec. 2, 3, 9, 10, 11, 14, 15, 21, 22. T. 21 S., R. 44 E., (MDM); Sec. 12, 13, 14, 23, 24.
6. Amargosa Canyon	Area of critical environmental concern	T. 21 S., R. 45 E., (MDM); Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24. T. 19 N., R. 7 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 21, 22, 28. T. 19½ N., R. 7 E., (MDM); Sec. 32, 33, 34, 35. T. 20 N., R. 7 E., (MDM); Sec. 15, 21, 22, 25, 26, 27, 28, 29.
7. Grimshaw Lake	Area of critical environmental concern	T. 20 N., R. 7 E., (MDM); Sec. 3, 4, 5, 8, 9, 10. T. 21 N., R. 7 E., (MDM); Sec. 28, 29, 32, 33, 34.
8. Horse, Sage and Cowhave Canyons (except in designated places).	Area of critical environmental concern	T. 27 S., R. 36 E., (MDM); Sec. 11, 12, 13, 14, 21, 22, 23, 24, 25. T. 27 S., R. 37 E., (MDM); Sec. 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29, 30.

Area	Type	Location
9. Desert Tortoise	Area of critical environmental concern	T. 30 S., R. 38 E., (MDM); Sec. 24, 26, 34.
		T. 31 S., R. 38 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 18, 20, 22, 24, 25, 28, 30, 32, 34.
		T. 32 S., R. 38 E., (MDM); Sec. 4, 6.
10. Chuckwalla Wells and Mesquite Springs	Area of critical environmental concern	T. 8 S., R. 17 E., (SBM); Sec. 28, 29, 32, 33.
11. Harper Lake Marsh	Area of critical environmental concern	T. 11 N., R. 4 N., (SBM); Sec. 22, 26, 27, 28.
12. Rainbow Basin (except in Owl in Canyon campground).	Area of critical environmental concern	T. 11 N., R. 1 W., (SBM); Sec. 18, 19, 20, 30.
		T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
13. McCain Valley (except in Lark Canyon Cottonwood Campgrounds or walk-in-camping).	Resource conservation area	T. 15 S., R. 6 E., (SBM); Sec. 26, 27, 31, 32, 34, 35.
		T. 15 S., R. 7 E., (SBM); Sec. 31, 32, 33, 34, 35. T 16S., R.6E., (SBM); Sec. 1, 2, 3, 4, 9, 10, 11, 12,13, 14, 15, 21.
		T. 16 S., R. 7 E., (SBM); Sec. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 32, 33, 34, 35.
		T. 17 S., R. 7 E., (SBM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 21, 23, 24, 26.
14. Table Mountain (where posted closed)	Area of critical environmental concern	T. 18 S., R. 41 E., (SBM); Sec. 28.

1. Shooting (except for legitimate hunting) is prohibited in:

Area	Type	Location
1. Darwin Falls	Area of critical environmental concern	T.18 S., R. 41 E., (MDM); Sec. 25, 26, 27, 34, 35.
		T. 19 S., R. 41 E., (MDM); Sec. 2, 3, 9, 10, 11, 14, 15, 21, 22.
2. Steam Well	Area of critical environmental concern	T. 29 S., R. 41 E., (MDM); Sec. 25, 26.
3. Santa Rosa Mountains	Habitat management area	All public lands in T. 5 S., R. 5 E., T. 6 S., R. 5 E., T. 6 S., R. 6 E., T. 6 S., R. 7 E., T. 7 S., R. 6 E., T. 7 S., R. 7 E., T. 8 S., R. 5 E., T. 8 S., R. 6 E., T. 8 S., R. 7 E., (SBM).
4. McCain Valley	Resource conservation area	All public lands in T. 5 S., R. 5 E.; T. 6 S., R. 5 E.; T. 6 S., R. 6 E.; T. 6 S., R. 7 E.; T. 7 S., R. 6 E.; T. 7 S., R. 7 E.; T. 8 S., R. 5 E.; T. 8 S., R. 6 E.; T. 8 S., R. 7 E., (SBM).
5. Rainbow Basin/Owl Canyon	Area of critical environmental concern	T. 11 N., R. 1 W., (SBM); Sec. 18, 19, 20, 30.
		T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
6. Big Morongo Canyon	Area of critical environmental concern	T. 15 S., R. 4 E., (SBM); Sec. 26, 27, 33, 34, 35.
		T. 2 S., R. 4 E., (SBM); Sec. 2, 4, 10.
7. Mapah Spring Canyon	Area of critical environmental concern	T. 3 N., R. 21 E., (SBM); Sec. 27, 28, 29, 32, 33, 34.
		T. 2 N., R. 21 E., (SBM); Sec. 3, 4.

3. Fossil collection is prohibited in Rainbow Basin/Owl Canyon Area of Critical Environmental Concern.

4. Firewood collection is prohibited in Surprise Canyon Area of Critical Environmental Concern.

5. Open campfires are prohibited except in fire rings provided for such purpose, in the smugglers cave portion of the Jacumba Outstanding Natural Area.

6. Shooting; except shotguns firing shot shells no larger than ½ the diameter of the bore, is prohibited in the southern portion of the Barstow Resource Area in the "Desert Area" defined in San Bernardino County Ordinance 22.011.

7. The lower Warm Springs and Palm Springs areas of Saline Valley, Located in Inyo County, T. 13 S., R. 39 E., Section 18 (MDM), for a radius of 300 yards of each spring, are hereby designated as a Special Management Area, known as the Saline Valley Management Area. Long term camping and the leaving of personal property will be allowed to occur for a maximum of 180 days during the time period of November 1st to April 30th. During the rest of the year, from May 1st to October 31st, the California Desert District 14 day camping limit and the prohibition on leaving personal property unattended longer than 10 days will be in effect.

8. Motorized vehicles are prohibited on El Mirage Dry Lake when and where the surface is wet.

9. It is prohibited to erect or maintain any toilet, showers, permanent structure, or other sanitary facilities on the public lands of the California Desert District without authorization.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION, CONTACT: Dennis McLane, District Ranger, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507. (714) 351–6419.

SUPPLEMENTAL INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. These rules have been recommended and adopted through the development of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected. These rules will also be posted near and/or within the lands, sites, or facilities affected.

Date: January 23, 1986.

Ed Hastey,

State Director.

[FR Doc. 86–1971 Filed 1–29–86; 8:45 a.m.]

BILLING CODE 4310–40–M

Grand Resource Area Management Plan, Grand and San Juan Counties, UT; Intent for Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent—Plan Amendment for the Grand Resource Area, Resource Management Plan, Grand and San Juan Counties, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) intends to amend an existing planning document.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1985 Grand Resources Area Resource Management Plan which involves portions of Grand and San Juan Counties, Utah. The purpose of the amendment would be to identify certain lands as suitable for disposal. Such identification would allow disposal by sale, exchange or other means, pursuant to applicable law. The lands comprise 210.82 acres in the vicinity of Thompson, Utah, described as follows:

Salt Lake Meridian

T. 21 S., R. 20 E.,
Sec. 20, SW¼ SW¼;
Sec. 28, lots 1 and 2;
Sec. 29, lots 1, 2, 3, 4 and 5.

The existing plan identifies these lands for retention. However, because of the location, potential for development, and other characteristics, these lands may be more suitable for disposal.

For 30 days from the date of publication of this notice the BLM will accept comments on this proposal. There will also be opportunity for public comment on the final planning decision.

Existing planning documents and information are available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (801) 259–8193.

FOR FURTHER INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area Manager.

Dated: January 21, 1986.

Gene Nodine,

District Manager.

[FR Doc. 86–2002 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-DQ-M

Filing of Plats of Surveys; New Mexico

January 22, 1986.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on January 22, 1986.

A survey representing the dependent resurvey of a portion of the Town of Manzano Grant and the survey of the Quari Unit of the Salinas National Monument and the former Quari Ruins State Monument within the Town of Manzano Grant, Township 4 North, Range 6 East, New Mexico Principal Meridian, under Group 825 NM.

This survey was requested by the National Park Service.

A survey representing the dependent resurvey of a portion of the south boundary of the Fort Stanton Military Reservation, portions of the north and east boundaries, a portion of the subdivisional lines and the survey of Tract 38, Township 10 South, Range 14 East, New Mexico Principal Meridian, New Mexico, and the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the survey of Tracts 38 and 39, Township 10 South, Range 15 East, New Mexico Principal Meridian, New Mexico, under Group 853 NM.

This survey was requested by the Roswell District Manager, Bureau of Land Management.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O., Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86–2003 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 3, 1986.

Willamette Meridian

OR T. 30 S., R. 7 W.,
OR T. 35 S., R. 8 W.,
OR T. 12 S., R. 45 E.

All of the above listed plats represent dependent resurvey of subdivisional lines and amended lottings.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 22, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–2004 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through March 1986

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract excution. The Bureau of Reclamation announcements or irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1986. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractural actions. Individual notice of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR)	**Federal Register**
(ID)	Irrigation District
(IDD)	Irrigation and Drainage District
(M&I)	Municipal and Industrial
(D&MC)	Drainage and Minor Construction
(R&B)	Rehabilitation and Betterment
(O&M)	Operation and Maintenance
(CAP)	Central Arizona Project
(CVP)	Central Valley Project
(P–SMBP)	Pick-Sloan Missouri Basin Program

Acronym Definitions Used Herein—Continued

(CRSP)	Colorado River Storage Project
(SRPA)	Small Reclamation Projects Act

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Five ID's, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington; Amendatory repayment contract; Land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by $189,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 320 acres of 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.50 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Fifty-three Palisades Reservior Spaceholders, Minidoka Project, Idaho-Wyoming; Contract amendments to extend term for which contract water may be subleased to other parties.

8. Cascade Reservior water users, Boise Project, Idaho; Repayment contracts for irrigation and M&I water; 59,721 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 1,000 acre-feet annually from stored water in Anderson Ranch Reservior for a term of up to 40 years.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. Columbia Basin Project Water Users, Columbia Basin Project, Washington; Water service contracts for approximately 6,000 acre-feet of irrigation water provided from Banks Lake with terms up to 40 years; Prior to contract execution, water users will have to come under provisions of the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. South Columbia Basin ID, Columbia Basin Project, Washington; Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

13. City of Boise, Boise Project, Idaho; M&I water service contract, 340 acre-feet annually from stored water in Anderson Ranch Reservoir for a term of up to 40 years.

14. Douglas County, Galesville Project, Oregon; SRPA cost escalation loan repayment contract; $1,000,000 proposed obligation.

Mid-Pacific Region: Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5030.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California; Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year: Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. El Dorado ID, Sly Park Unit, CVP, California; D&MC contract to allow the District to accomplish the construction work with the remaining funds from the distribution system contract, and amend the Unit 4 portion of its existing repayment contract to pay interest on actual M&I use.

6. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. Mid-Valley Water Authority, CVP, California; Temporary water supplies up to 100,000 acre-feet.

9. City of Avenal, CVP, California; Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. United Water Conservation District, SRPA, California; Loan repayment contract, $18,730,000 proposed obligation.

12. State of Hawaii, Molokai Project, SRPA; Contract amendment to provide for use of facilities for M&I purposes.

13. State of California, CVP, California; contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

14. Pixley ID, SRPA, California; Loan repayment contract, $12,300,000 proposed obligation.

15. Kaiser Development Company, CVP, California; Sacramento River water right contract; Suspension of agricultural contract and execution of M&I contract.

16. Madera ID, Madera Canal, CVP, California, Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

17. Hills Valley ID, CVP, California; Amendatory water service contract, additional 400 acre-feet and reallocate 800 acre-feet of water from the Ducor ID for a total increase of 1,200 acre-feet.

18. Tri-Valley Water District, CVP, California; Amendatory water service contract, additional 160 acre-feet.

19. County of Tulare, CVP, California; Amendatory water service contract, additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

20. Truckee-Carson ID, Newlands Project, Nevada; Emergency Loan contract; Contract will assure repayment of funds to be provided by the United States for the emergency repair of the right sluice and right cylinder gates on Lahontan Dam and Reservoir.

21. Truckee-Carson ID, Newlands Project, Nevada; Warren Act contract to wheel 9,500 acre-feet of nonproject water through project facilities.

22. Westlands Water District, CVP, California; $3,700,000 loan for drain research.

23. Colusa County WD, CVP, California; Proposed contract amendment to permit delivery of M&I water through existing 9(d) system.

24. Colusa County WD, CVP, California; Proposed contract amendment to provide M&I water to existing contract service area.

25. ID's and similar water user entities; Amendatory water service contracts; Purpose is to change the definition of "year".

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. M&I water users, Navajo Unit, CRSP, New Mexico; Negotiate or amend long term contracts for M&I water with current long-term and short-term contractors or new contractors pursuant to section II or Pub. L. 87–483 and Hydrologic Determination date January 29, 1985.

3. Animas-La Plata Conservancy District, Animas-La-Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation, Contract terms dependent upon final non-Federal up-front cost sharing agreement.

4. La Plata Conservancy District. Animas-La Plata Project, New Mexico; Repayment contract; 16,000 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I repayment contract; 19,700 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

6. City of Aztec, Animas-La Plata Project, New Mexico; M&I repayment contract; 5,800 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

7. City of Bloomfield, Animas-La Plata Project, New Mexico; M&I repayment contract; 5,300 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

8. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 94,100 acre-feet per year; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199. Special election on contract passed November 19, 1985, and contract executed on November 26, 1985. Contract congressional review.

9. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado; Repayment contract for 26,500 acre-feet per year for M&I use and 3,300 acre-feet per year for irrigation use. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

10. Grand Valley Project, Colorado; Contract to continue operation and maintenance of Grand Valley powerplant.

11. State of Wyoming, Seedskadee Project, Wyoming; one contract for repayment or reimbursable cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (Pub. L. 98–404); one amendatory repayment contract to increase existing repayment contract ceiling.

12. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado, M&I uses, 20 acre-feet and less for 20–40 years.

13. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

14. Bonneville Unit, Central Utah Project, Utah; Two repayment contracts for repayment of Jordan Aqueduct with Salt Lake County Water Conservancy District and the Metropolitan Water District. Contracts expected to be executed during January 1986.

15. Upper Yampa Water Conservancy District, Colorado; Repayment contract to repay a loan of $4,478,000 for the construction of Stagecoach Dam and Reservior pursuant to the SRPA of 1956, Pub L. 84–984, as amended.

16. Ute Mountain Ute Tribe, Animas-LaPlata Project, Colorado and New Mexico; Repayment Contract: 6,000 acre-feet per year for M&I use in Colorado; 25,800 acre-feet per year for irrigation use in Colorado; 800 acre-feet per year for irrigation use in New Mexico.

17. Navajo Indian Tribe, New Mexico; Repayment Contract for 7,600 acre-feet per year for M&I use.

18. Ute Mountain Ute Indian Tribe, Dolores, Project, Colorado; Repayment contract for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293–8536.

1. Salt River Project, and cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, Plan 6, CAP, Arizona; Contract for purchase by the above cities of the entire yield from additional conservation storage capacity of Cliff Dam and modified Roosevelt Dam and establishment of operating criteria for those facilities.

2. Agricultural and M&I water users, CAP, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Settlement Act; Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project; Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30-acre feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities, Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

8. Eastern Municipal Water District, Hemet, California; repayment contract for $8.3 million SRPA escalation loan.

9. Indian and non-Indian agricultural and M&I water users, CAP, Arizona, Contracts for repayment of Federal expenditures for construction of distribution systems.

10. Gila River Indian Community, Arizona; Contract for the repayment of a $6,574,000 SRPA loan.

11 Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

12. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

13. Western States Minerals, Arizona; Contract for M&I Water for mining operation in Mohave County; 70 acre-feet of Colorado River water per year.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

4. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

5. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Tom Green Water Improvement District, San Angelo Project, Texas; Amendatory contract to defer payment of construction charges associated with the 1985 crop year due to the nonavailability of irrigation water for use by the District's water users.

7. Rio Grande Water Conservation District, Alamosa, Colorado; Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

8. Water sales contracts with water users along the Rio Grande below Fort Quitman, Texas, for purchase of surplus Rio Grande Project water to be released to accommodate spring runoff.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Individual irrigators, M&I and miscellaneous water users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

4. ID's and similar water user entities; Amendatory repayment and water service contract; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota; Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–273 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming; Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

8. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

9. Corn Creek ID, New Grattan Ditch Company, and Earl Michael, Glendo Unit, P–SMBP, Wyoming, and Nebraska; Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P–SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,816 outstanding.

11. Green Mountain Reservoir, Colorado-Big Thompson Project; Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

12. Individual irrigators, M&I, and miscellaneous water users, Lower Missouri Region, southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

13. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

14. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P–SMBP, narrows Unit, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

15. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

16, Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $866,231 outstanding.

17. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

18. Webster ID No. 4, Webster Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

19. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for long-term storage contracts.

20. Twin Loups Reclamation District, P–SMBP, D&MC contract and a sole source contract for correction of initial construction deficiencies and monitoring during initial filling, priming and puddling activities of the project. Proposed contracts are to be $500,000 and $1,439,000, respectively.

21. Farwell Irrigation District, Nebraska; D&MC contract for the correction of drainage and seep area on the project.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entitles may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to (i) the significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: January 22, 1986.

William C. Klostermeyer,

Acting Commissioner of Reclamation.

[FR Doc. 86-2028, Filed 1-29-86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

ACTION: Notice of availability of environmental documents prepared for Outer Continental Shelf (OCS) mineral prelease and exploration proposals on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EA's) and findings of no significant impact (FONSI's) prepared by the MMS for the following oil and gas prelease and exploration activities proposed on the Alaska OCS. The listing includes all proposals for which environmental documents were prepared by the Alaska OCS Region in the 3-month period preceding this notice.

Activity/Operator

Modification of Exploration Drilling Program in the Beaufort Sea (Sale 87) for Shell Western E and P, Inc., as operator for itself and others. Shell has an Exploration Plan approved on April 12, 1985, to drill up to six exploratory wells from an ice-strengthened drillship. Shell has submitted an amendment to their approved Exploration Plan. The amendment is for an exception to the seasonal drilling stipulation and for conduct of a study on the possible effects of drilling noise from their drillship on migrating bowhead whales. The proposal will require a one-time exception from the requirements of Sale 87, Stipulation 4 which prohibits exploratory drilling during the bowhead whale migration. This FONSI and associated EA address the possible effects of the exception.

Location

Lease	Blocks
OCS-Y 0871	678

Environmental Assessment

Addendum to EA No. AK 85-05.

FONSI Date

October 9, 1985.

Activity/Operator

Exploration Drilling Program for Beaufort Sea (Sale 71) Amoco Production Company, as operator for itself and others.

Location

Amoco is proposing to drill one exploratory well from a man-made spray ice island. The location of Amoco's lease is described as follows:

Lease and Block Numbers

Lease	Blocks
OCS-Y 0302	139 and 140

Environmental Assessment

No. AK 85-09.

FONSI Date

October 21, 1985.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS.

The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA's are used as a basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis of that finding and includes a summary or copy of the EA.

The FONSI and associated EA for the activity listed above are available for public inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, Phone: (907) 261-4435.

Persons interested in reviewing specific environmental documents, or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS, are encouraged to contact the above listed MMS office.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Irven F. Palmer, Jr.,

Acting Regional Director.

[FR Doc. 86-2006 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Louisiana

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7613, Block 312, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 23, 1986. Comments must be received within 15

days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805 .

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendment of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 24, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–2007 Filed 1–29–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-fifth meeting of the Board for International Food and Agricultural Development (BIFAD) on February 25, 1986.

The purpose of the meeting is threefold. The Board will be presented with a Budgetary Outlook by Marshall Brown, Kelly Kammerer, Allison Herrick and Tom Rollis, all from the Agency for International Development. Mr. Robert Berg, Co-Director of the Committee on African Development Strategies will present the Board with an overview of the *Compact for African Development* study. Thirdly, a Status Report on AID Agricultural Research and Faculty Development Plan for Africa will be presented by Alexander Love, Keith W. Sherper and Nyle C. Brady.

The meeting will begin ast 1:30 p.m. and adjourn at 4:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street, NW., Washington, DC. The meeting is open to the public. Any interested person may attend, may file written statements with the Board, before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235–8929.

Dated: January 24, 1986.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 86–2064 Filed 1–29–86; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review.

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with the investigation of processed mushrooms (Inv. No. 332–206) pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), in accordance with a request by the President on March 10, 1977, and amplified by the Office of the United States Trade Representative (USTR) in letter of March 30, 1977 and January 14, 1985.

Summary of Proposals

(1) Number of forms submitted; One.

(2) Title of form: Processed Mushrooms—Annual Report on Production, Sales, and Inventories.

(3) Type of request: Reinstatement.

(4) Frequency of use: Annually.

(5) Description of respondents: U.S. mushroom processors.

(6) Estimated number of respondents: 40.

(7) Estimated total number of hours to complete the forms: 40 annually.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Addition Information or Comment: Copies of the proposed form and supporting documents may be obtained from Joan M. Gallagher, USITC (tel. no. 202–724–1756). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within two

weeks of the date this notice appears in the **Federal Register.** Ms. Picoult's telephone number is 202–395–7231.

Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: January 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2019 Filed 1–29–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–270 (Final)]

Import Investigations; 64K Dynamic Random Access Memory Components (DRAM's) From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–270 (Final) under section 735(b) of the Tariff Act of 1930 (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 in the United States is materially retarded, by reason of imports from Japan of 64K dynamic random access memory components (DRAM's) of the N-channel metal oxide semiconductor type, provided for in item 687.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV) (50 FR 50649, Dec. 11, 1985). Commerce has extended its investigation and will make its final LTFV determination on or before April 23, 1986 (51 FR 234, Jan. 3, 1986). The Commission will make its final injury determination by June 6, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this 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), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 64K DRAM's from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on June 24, 1985, by Micron Technology, Inc., of Boise, ID. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 32778, Aug. 14, 1985).

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 (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the 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.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on April 15, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 30, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 April 11, 1986. 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. April 15, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 7, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 7, 1986.

A signed original and fourteen (14) 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 must 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).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 22, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1960 Filed 1-29-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-239]

Certain Non-Contact Laser Precision Dimensional Measuring Devices and Components Thereof; Investigation; Mitutoyo Manufacturing Co., Ltd.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C 1337), on behalf of Techmet Company, 6060 Executive Boulevard, Dayton, Ohio 45424. A supplement to the complaint was filed on January 10, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain non-contact laser precision dimensional measuring devices and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of claim 21 of U.S. Letters Patent 3, 765,774; and (2) misappropriation of trade secrets. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., or Stephen L Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, Telephone 202-523-1273 and 202-523-0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, The U.S. International Trade Commission, on January 22, 1986, ORDERED THAT:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain non-contact laser precision dimensional measuring devices and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of claim 21 of U.S. Letters Patent 3, 765,774; and (2) missappropriation of trade secrets, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Techmet Company, 6060 Executive Boulevard, Dayton, Ohio 45424.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mitutoyo Manufacturing Co., Ltd., 33-7 Shiba 5-chome, Minato-ku., Tokyo, Japan;

Mitutoyo Corporation, 16935 East Gale Ave., City of Industry, California 91744;

MTI Corporation, 18 Essex Road, Paramus, New Jersey 07652;

MTI Engineering Corporation, 16935 East Gale Ave., City of Industry, California 91744.

(c) Gary Rinkerman, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, United, States International Trade Commission, 701 E Street NW., Rooms 128 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation;

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge; and

(4) The following entities are not named as respondents in this investigation but shall be served with a copy of the notice of investigation, the complaint, and section 210.26 of the rules:

A.J. Rod Co., Inc., 418 West Main, Box 1467, Grand Prairie, Texas 75051-1467;

Omron Company, 1 East Commerce Drive, Schaumburg, Illinois 60195.

Reponses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21) Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR. 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential infomation contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission

Issued: January 24, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-2020 Filed 1-29-86; 8:45 am]

BILLING CODE 7220-02-M

[Investigation No. 337-TA-227]

Certain One Piece Cold Forged Bicycle Cranks; Commission Decision not to Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the administrative law judge's initial determination granting respondent's motion for summary determination of noninfringement and has vacated as moot the administrative law judge's initial determination denying complainant's motion for temporary relief under section 337 of the Tariff Act of 1930 and 19 U.S.C. 1337a in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), 19 U.S.C. 1337a, and in §§ 210.53, 210.54, and 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.53, 210.54, and 201.56)

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0375.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the presiding administrative law judge issued an initial determination (ID) granting respondents' motion for summary determination and an ID denying complainant's motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e), (f)). Complainant filed a petition for review of the ID on summary determination pursuant to § 210.54(a) of the Commission's rules. Respondents and the Commission investigative attorney filed responses to that petition. No petitions for review of the ID denying temporary relief were filed, nor were any Government agency comments received with respect to either ID.

Having examined the record, including the petition for review and the responses thereto, the Commission has determined not to review the ID on summary determination and to vacate the ID on temporary relief as moot.

Notice of this investigation was published in the **Federal Register** of August 21, 1985 (50 FR 33861).

Copies of the nonconfidential versions of the administrative law judge's initial determinations and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: January 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1962 Filed 1–29–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–265–266 (Preliminary) and 731–TA–297–99 (Preliminary)]

Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930, that there is a resonable indication that industries in the United States are materially injured by reason of imports from Mexico and Taiwan of porcelain-on-steel cooking ware,[3] provided for in item 654.08 of the Tariff Schedules of the United States, which are allegedly being subsidized.[4] [5] The Commission also determines,[2] pursuant to section 733(a) of the Act, that there is a reasonable indication that industries in the United States are materially injured by reason of such imports from Mexico, the People's Republic of China, and Taiwan, which are allegedly being sold at less than fair value (LTFV).[4] [5]

Background

The Commission instituted these investigations on December 4, 1985, following the receipt of a petition from General Housewares Corp., Terre Haute, IN, which alleged that subsidized imports of porcelain-on-steel cooking ware from Mexico and Taiwan and LTFV imports of such articles from Mexico, the People's Republic of China, and Taiwan are being sold in the United States and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. 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, DC, and by publishing the notice in the **Federal Register** of December 12, 1985 (50 FR 50855). The conference was held in Washington, DC, on December 27, 1985, and all person who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 1986. The views of the Commission are contained in USITC Publication 1800 (January 1986), entitled "Porcelain-on-Steel Cooking Ware from Mexico, The People's Republic of China, and Taiwan: Determinations of the Commission in Investigations Nos. 701–TA–265 and 266 (Preliminary) and Determinations of the Commission in Investigations Nos. 731–TA–297, 298, and 299 (Preliminary), Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: January 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1963 Filed 1–29–86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Brunsdale did not participate in these investigations.

[3] Cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing of steel and enameled or glazed with vitreous glasses, but not including kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the Untied States Annotated).

[4] Commissioner Eckes determines there is a single domestic industry producing porcelain-on-steel cooking ware, and make his affirmative finding accordingly.

[5] Chairwoman Stern, in accordance with section 171(4)(D), found one domestic industry.

[Investigation No 731–TA–266 (Final)]

Certain Steel Wire Nails From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–266 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(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 in the United States is materially retarded, by reason of imports from the People's Republic of China of one-piece steel wire nails made of round steel wire, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS), and similar steel wire nails of one-piece construction, of any diameter, provided for in item 646.30 of the TSUS, two-piece steel wire nails, provided for in item 646.32 of the TSUS, and steel wire nails with lead heads, provided for in item 646.36 of the TSUS, and of which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final

LTFV determination on or before March 18, 1986, and the Commission will make its final injury determination by May 8, 1986, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this 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), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 9, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–523–0369), Office of Investigations, U. S. International Trade Commission, 701 E Street NW., Wshington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be otained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain steel wire nails from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on June 5, 1985, on behalf of Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Dickson Weatherproof Nail Co., Florida Wire & Nail Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Fabric Co., and Wire Products Co. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 31057, July 31, 1985).

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 (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the 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.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 18, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 3, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 March 14, 1986. 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 March 18, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 28, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). 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 April 10, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 10 1986.

A signed original and fourteen (14) 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 must 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).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: January 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1961 Filed 1–29–86; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85–53]

Felix Sesin, M.D.; Denial of Application

On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Felix Sesin, M.D. (Respondent) of 225 60th Street, West New York, New Jersey 07093, an Order to Show Cause proposing to deny his application, executed on June 7, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

The statutory basis for the proposed action was that the registration of Dr. Sesin would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4), as evidenced by, but not limited to, Dr. Sesin's experience in dispensing controlled substances and his failure to comply with applicable state law relating to the dispensing of controlled substances.

In a letter dated November 7, 1985, Respondent's counsel requested an extension of time to respond to the Order to Show Cause. This request was granted by Administrative Law Judge Francis L. Young, and the matter was placed on Judge Young's docket. On December 9, 1985, Respondent's counsel specifically waived Respondent's opportunity for a hearing and instead submitted a written statement regarding Respondent's position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that an undercover investigation of Respondent was conducted by New Jersey state and county investigators between April 29, 1982 and March 16, 1983. During the investigation, four undercover agents made a total of eleven visits to Respondent's medical office. On the first visit of each of the four agents, the "patient" informed Dr. Sesin of recent or current drug use, including heroin or methadone, or described symptoms which Respondent allegedly identified during the visit as withdrawal symptoms. In most instances, Respondent made no attempt to physically examine the patient. On at least one occasion, Dr Sesin did ask to listen to an agent's heart. However, Dr. Sesin accepted the agent's statement that he did not want an examination. When Dr. Sesin did perform a physical examination of one of the agents, it was cursory at best.

On each occasion, Respondent either dispensed or prescribed a variety of Schedule III and IV controlled substances to the undercover agents, including Vicodin, Valrelease, Paxipam, Centrax, Valium and Darvocet N-100. In addition, Respondent often either dispensed or prescribed various non-controlled substances, including Sinequan and Vistaril. On at least one occasion, Respondent told the undercover agent to go to a different drugstore with the new prescription. In another instance, Respondent wrote an undercover agent a prescription for Paxipam while Respondent was in his car on the street. From numerous conversations between Dr. Sesin and the undercover agents, it was evident that Dr. Sesin knew or should have known that the drugs would be illicitly consumed or distributed.

On or about August 4, 1983, the Hudson County Grand Jury returned a 17 count indictment against Felix Sesin, charging him with unlawful distribution of controlled substances. Dr. Sesin was subsequently admitted into a pre-trial intervention program. Dr. Sesin complied with the directives imposed by that program and the indictment was dismissed in July 1985.

On November 9, 1983, the New Jersey State Board of Medical Examiners ordered Dr. Sesin's controlled substance privileges temporarily suspended pending the final determination of the Board regarding Dr. Sesin. On August 10, 1984, the New Jersey State Board of Medical Examiners entered a final order regarding Dr. Sesin. The Board ordered, among other things, that:

1. Respondent's license to practice medicine and surgery be suspended for one year, effective July 15, 1984, with the last ten months of the suspension stayed.

2. The Board would retain Respondent's state and federal controlled substance registrations which were surrendered to the Board on November 9, 1983.

3. On September 14, 1984, Respondent's state and federal controlled substance registrations would be returned to him and he would be able to prescribe controlled substances during the remainder of the period of suspension subject to the following conditions and restrictions: Respondent shall be restrained and enjoined from administering, prescribing and/or dispensing any and all controlled substances, except that Respondent may write orders for controlled substances in the hospital charts for patients admitted to St. Mary's Hospital in Hoboken, New Jersey, who are being cared for by him during their hospital stay.

New Jersey has reinstated Dr. Sesin's controlled substance privileges. Dr. Sesin now wishes to once again be registered with the Drug Enforcement Administration and therefore submitted the application for registration that is the subject of this final order.

In his written statement, Respondent contends that his "weakness" related to a lack of knowledge regarding controlled substances. To remedy this situation, Dr. Sesin enrolled in a 114 hour mini-residency in the use and abuse of controlled substances given at the University of Medicine and Dentistry of New Jersey. Respondent states that as a result of this mini-residency, his knowledge in the use or abuse of controlled substances has substantially improved. The Administrator commends Respondent's efforts to become better educated regarding controlled substances. However, the Administrator finds it hard to believe that Respondent's prescribing and dispensing practices to the undercover agents were due solely to his lack of knowledge regarding controlled substances. Dr. Sesin is a trained medical professional. As such, Dr. Sesin must certainly have been aware that it is not legitimate medical practice to prescribe or dispense controlled substances to a patient without first performing a physical examination or at the very least inquiring into the medical history of the patient so as to determine whether the patient has medical need for the drug. Additionally, Dr. Sesin must have known that it is not acceptable to write a controlled substance prescription, or any prescription, while sitting in his car.

The Administrator concludes that Dr. Sesin knew that what he was doing was wrong. On at least one occasion, Dr. Sesin told one of the undercover agents to make sure to go to a different drugstore with the new prescription. This statement clearly shows that Dr. Sesin was attempting to cover up his illegal prescribing practices. He did not want to arouse any suspicions. On another occasion, Dr. Sesin asked the undercover agent what the agent was doing with all the medication. The undercover agent replied that he was getting rid of some of the drugs in order to pay some of his bills. Dr. Sesin asked the agent if he was giving any of it to his friends and the agent answered that he was.

In his written statement, Respondent contends, "that to impose any further punishment upon him at this juncture is manifestly unfair." The "punishment" that Dr. Sesin has already endured was for past misdeeds. This administrative decision looks prospectively. Its purpose is the future exercise of effective control over dangerous drugs. The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. The facts of this case, as set forth above, indicate that Dr. Sesin lacks the necessary awareness of the responsibilities imposed by DEA registration. The evidence which Dr. Sesin has presented in this matter is inadequate to overcome the foregoing conclusion. Therefore, the Administrator

concludes that at this point in time, Dr. Sesin has not demonstrated that he should be entrusted with a DEA registration and the responsibilities attendant to such registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Felix Sesin, M.D., for registration under the Controlled Substances Act, be, and it hereby is denied.

Dated: January 27, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-2065 Filed 1-29-86; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board; Meeting

The Missing Children's Advisory Board will meet in Washington, DC, on March 7 and 8, 1986. The meeting will take place at the Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20004. The public is welcome to attend.

The Board will discuss its annual Comprehensive Plan and other issues related to missing and exploited children.

For further information, please contact Michelle Easton, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

Dated: January 24, 1986.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-2021 Filed 1-29-86; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Solicitation; Applied Research Grants

The National Institute of Justice is soliciting a proposal for applied research grants in the following area:

Program	Due date (1986)
Supplementing the National Crime Survey	May 2.

Multiple awards are planned in this area. Description of the program and the application process may be obtained from the National Criminal Justice Reference Service. Interested organizations should write to: NCJRS, P.O. Box 6000, Rockville, Maryland 20850. Attn: Program Solicitations.

James K. Stewart,

Director.

[FR Doc. 86-2009 Filed 1-29-86; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400-OL (ASLBP No. 82-472-03 OL)]

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant); Order (Setting Times for Prehearing Filings and Hearing)

January 24, 1986.

Before Administrative Judges: James L. Kelley, Chairman, Dr. James H. Carpenter, and Glenn O. Bright.

On January 23, 1986, the Board and parties participated in a telephone conference call to discuss dates for the reopened hearing on Eddleman Contention 57-C-3 called for by the Board's Order of January 16, 1986. This Order confirms the dates established and sets the place for hearing.

Identification of voluntary witnesses—Feb. 7
Requests for subpoenas—Feb. 12
Prefiled testimony on:
(1) Tone alert radios—Feb. 18
(2) Other issues—Feb. 21
Hearing—March 4

All of the above dates apply to *all* parties, subject to the possibility of a change for good cause shown. The Board regards the March 4 hearing date as firm and not subject to change except for extraordinary cause.

The hearing will be held at the Holiday Inn Downtown, 320 Hillsborough Street, Raleigh, NC 27602 (Phone No. (919) 832-0501) on March 4, 1986, beginning at 8:30 a.m. Note that this Holiday Inn is downtown and not the same Holiday Inn as the last hearing.

The discovery dispute between Mr. Eddleman and FEMA will be resolved in a further telephone conference in the near future.

For the Atomic Safety and Licensing Board.

James L. Kelley,

Chairman, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 86-2099 Filed 1-29-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp., et al. (Three Mile Island Nuclear Station, Unit 2); Issuance of Amendment to Facility Operating License

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

II

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292).

The new requirements imposed on the licensee by the February 11, 1980 Order of the Director of Nuclear Reactor Regulation were issued as the Recovery Mode Proposed Technical Specifications (PTS), and have been revised, in part, in subsequent Amendments of Order. In response to the notice of opportunity to request a hearing provided by the Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, several petitions for leave to intervene were filed and a prehearing conference was conducted on July 7, 1980. Subsequent to that time, discussions with the recognized parties have led to mutual agreement in the areas of concern, resulting in the resolution of all outstanding issues and the withdrawal of all petitions.

On November 8, 1985, the Atomic Safety and Licensing Board issued an Order entitled "Granting Joint Motion to Approve Stipulation, Dismissing ECNP and Dismissing Proceeding." This order approved the joint stipulation entered into by the Environmental Coalition on

Nuclear Power (ECNP) the last remaining intervenor, the NRC Staff and the Licensee for the purpose of resolving all remaining proposed contentions and consequently terminated the proceeding.

III

In light of the termination of this proceeding, the NRC staff is now formally amending the License (Facility Operating License No. DPR–73) to include those Proposed Technical Specifications issued by the Order of the Director, Nuclear Reactor Regulation, dated February 11, 1980, as amended from time to time by Amendments of Order. Each of these revisions to the PTS was issued with a supporting staff safety evaluation as were the corresponding Amendments of Order. Appropriate environmental reviews of each action were performed as well. The staff has concluded in these safety evaluations that the PTS, as amended, impose appropriate limitations on the licensee to assure the continued maintenance of the facility in a safe shutdown condition.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, Facility Operating License No. DPR–73 is hereby amended to incorporate the Recovery Mode Proposed Technical Specifications as Appendix A to said license. The supporting documents approving the previous provisions to the Proposed Technical Specifications are available for inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. This license amendment is effective as of the date of its issuance.

Dated at Middletown, Pennsylvania, this 27th day of January, 1986.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, TMI–2 Cleanup Project Directorate, Division of PWR Licensing–B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–2100 Filed 1–29–86; 8:45 am]

BILLING CODE 7590–01–M

Radioactive Waste; Low-Level Waste Compacts; NRC Technical Assistance Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of NRC Low-Level Waste Technical Assistance Program.

SUMMARY: This notice is to inform the public of the Nuclear Regulatory Commission's (NRC) ongoing regulatory assistance program to provide technical guidance to States and compact organizations in developing and regulating new low-level radioactive waste (LLW) disposal facilities. The purpose of this NRC technical assistance effort is to promote timely implementation of the Low-Level Radioactive Waste Policy Act, as amended, which assigns States the responsibility to provide for disposal of commercial LLW. Assistance is available to State and compact entities with disposal capacity development responsibilities, to NRC Agreement State programs with regulatory responsibilities, and to States intending to establish Agreement State status. Due to resource limitations, NRC will target technical assistance to those States and compact regions in which substantive progress is taking place toward the siting and development of new LLW disposal facilities.

DATES: Assistance will be available on a continuing basis.

ADDRESSEE: Comments regarding this notice may be directed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT: Donald A. Nussbaumer, Assistant Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7767.

SUPPLEMENTARY INFORMATION: The Low-Level Radioactive Waste Policy Act, as amended, assigns States the responsibility to provide for disposal of commercial LLW, and encourages the formation of interstate compacts to meet this responsibility. NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. NRC will assist States and compact organizations involved in developing and regulating disposal site development. Attachment A is the letter sent to all Agreement State and non-Agreement State regulatory programs highlighting the NRC Low-Level Waste Technical Assistance Program and Attachment B is the letter sent to the Low-Level Radioactive Waste Compacts and those States not presently in compacts on the same subject.

Dated at Bethesda, Maryland, this 23rd day of January 1986.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Attachment A.—Nuclear Regulatory Commission

January 22, 1986.

All Agreement and Non-Agreement States

NRC Low-Level Waste Technical Assistance Program

As you are aware, the Low-Level Radioactive Waste Policy Act, as amended, assigns States the responsibility to provide for disposal of commercial LLW, and encourages the formation of interstate compacts to meet this responsibility. State activity following passage of the original Policy Act in 1980 has generally focused on formation of compacts and consideration of approaches for designating States to host new LLW disposal facilities. Certain States have elected to develop their own disposal capacity rather than joining a compact. The critical measure of success in implementing the Low-Level Radioactive Waste Policy Act is the establishment of new disposal capacity in those States and compact regions that are currently without such capacity.

NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. The NRC also recognizes that timely and understandable regulatory guidance is needed to assist States and compacts as they proceed toward the development of new disposal facilities. States that plan to expand their regulatory programs in response to low-level waste disposal responsibility may also need NRC assistance and advice.

The purpose of this letter is to highlight the availability of NRC regulatory assistance, to describe the nature of such assistance and to further encourage Agreement States and those non-Agreement States anticipating low-level waste regulatory authority under a 274b agreement to contact NRC to facilitate assistance activities. NRC staff has met with officials from a variety of States and LLW compacts in the past several months to describe the type and level of assistance NRC is prepared to provide. Also, ongoing technical assistance activities are underway in several States.

The scope of available NRC technical assistance includes regulatory related topics associated with disposal site selection, design, licensing and operation. For Agreement States or States seeking low-level waste regulatory authority under a 274b agreement, assistance may include but would not necessary be limited to:

1. Guidance in assessing staff technical capability needs and overall staffing requirements;
2. Assistance in evaluating contractor capabilities and/or proposals;
3. Assistance in evaluating disposal site license applications and environmental assessments; and
4. Assessment of the performance of unique wastes in the disposal environment.

NRC intends to coordinate its technical assistance activities with the Department of

Energy Low-Level Waste Management Program to help ensure that relevant data and analyses developed by the two Federal agencies are shared with States, compacts, and other parties interested in successful implementation of the Low-level Radioactive Waste Policy Act as amended.

Please contact the NRC Regional State Agreement Representative for your State to explore specific technical assistance needs. I would be pleased to receive any general comments you may have regarding NRC's effort in this area.

G. Wayne Kerr,

Director, Office of State Programs.

Attachment B.—Nuclear Regulatory Commission

January 22, 1986.

Memorandum For: Addressees

From: G. Wayne Kerr, Director, Office of State Programs

Subject: NRC Low-Level Waste Technical Assistance Program

The critical measure of success in implementing the Low-Level Radioactive Waste Policy Act, as amended, is the establishment of new disposal capacity in those States and compact regions that are currently without such capacity.

NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. The NRC also recognizes that timely and understandable regulatory guidance is needed to assist States and compacts as they proceed toward the development of new disposal facilities. States that plan to expand their regulatory program in response to low-level waste disposal responsibilities may also need NRC assistance advice.

The purpose of this letter is to highlight the availability of NRC regulatory assistance, to describe the nature of such assistance, and to further encourage States and compacts to contact the NRC to facilitate assistance activities. NRC staff has met with officials from a variety of States and LLW compacts in the past several months to describe the type and level of assistance NRC is prepared to provide. Also, ongoing technical assistance activities are underway in several States.

The NRC intends to concentrate limited staff resources on those specific States and compacts in which substantive progress toward siting and development of new disposal facilities is taking place. Assistance may be provided through staff meetings to discuss technical and licensing topics, supplying NRC staff as resource personnel to advisory bodies or LLW symposia, development of technical studies and related regulatory guidance documents, addressing specific inquiries, and other means capable of effectively meeting State needs. Your comments are invited on the assistance considered to be most relevant to your needs.

The scope of available NRC technical assistance includes regulatory-related topics associated with disposal site selection, design, licensing and operation. For States and compact entities with developmental responsibilities, this may include but would not necessarily be limited to:

1. Prelicensing guidance on the applicability of existing NRC regulatory requirements to alternative LLW disposal methods;

2. Guidance on development of site selection criteria consistent with the NRC 10 CFR Part 61 regulation, and application of such criteria to site screening studies;

3. Guidance on characterizing candidate disposal sites and preparing environmental impact report documents;

4. Guidance on disposal site modeling and performance assessment; and

5. Guidance on license application content requirements.

The NRC does not intend to provide technical assistance for developing regional management plans nor designation of States to host new LLW disposal facilities. The NRC also will not undertake detailed engineering design work nor research on reference concept designs for commercial disposal facilities. These developmental activities are considered inconsistent with NRC's regulatory role. Rather, NRC anticipates providing detailed regulatory analyses of various disposal facility design concepts that may be submitted by compacts or by individual States to NRC. We anticipate that NRC guidance would be most useful in cases where detailed information is provided by those entities pursuing disposal site development.

NRC intends to cooperate closely with States and compacts pursuing disposal site development. NRC also intends to coordinate its technical assistance activities with the Department of Energy Low-Level Waste Management Program to help ensure that relevant data and analyses developed by the two Federal agencies are shared with States, compacts, and other parties interested in successful implementation of the Low-Level Radioactive Waste Policy Act as amended.

Please contact your NRC Regional State Liaison Officer (RSLO) to explore specific technical assistance needs. I would also be pleased to receive any general comments you may have regarding NRC's efforts in this area.

G. Wayne Kerr,

Director Office of State Programs.

[FR Doc. 86-2102 Filed 1-29-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of an Intergovernmental Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Intergovernmental Policy Advisory Committee on Trade. This Committee will be chartered pursuant to section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 9(a)(2)). The charter of this Committee will be filed 15 days from the date of this notice.

The Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and relevant Cabinet agencies on policy issues including, but not limited to, statutes and/or regulations enacted or promulgated by state and local governments that may affect U.S. trade policy objectives, as well as statutes, regulations, and other acts promulgated or enacted by the federal government that may affect the relationship between international trade and state and local governments.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Individuals wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Washington, DC 20506, (202) 395-6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 86-2096 Filed 1-29-86; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Docket No. SS86-1]

Preferred Rate Study

January 24, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

The Postal Rate Commission will undertake to study the use of most categories of "preferred rate" mail, which currently enjoy reduced rates of postage supplemented by federal subsidies. The study is being done at the joint request of the Chairman of the Committee on Post Office and Civil Service of the House of Representatives, and the Chairman of the Subcommittee on Civil Service, Post Office and General Services, Committee on Governmental Affairs of the Senate, for use in the FY 1987 budget process. A copy of the request is Attachment A to this notice. The study will address all of the topics described in section 15103 of the Conference Reconciliation Bill (Consolidated Omnibus Budget Reconciliation Act of 1985,) Attachment B to this notice, as explained by the

Statement of Managers of the bill, Attachment C to this notice.

The Commission welcomes comments from interested persons, and will maintain and review a public file of comments received on issues involved in this study. The Commission also expects to hold public hearings to enable interested persons to discuss in-depth all of the matters under consideration. Any person wishing to be informed of Commission activities and scheduled hearings, or to provide written comments for Commission consideration, should write: Postal Rate Commission, Office of the Secretary, 1333 H Street NW., Washington, DC 20268–0001.

Charles L. Clapp,

Secretary.

Attachment A

Congress of the United States
House of Representatives
Washington, DC 20515

January 10, 1986

The Honorable Janet D. Steiger,
Chairman, Postal Rate Commission, 1333 H Street NW., Washington, D.C. 20268–0001

Dear Chairman Steiger: Section 15103 of the Conference Report accompanying H.R. 3128, the Consolidated Omnibus Budget Reconciliation Act of 1985, would direct the Postal Rate Commission to conduct a study and submit to the Congress a report concerning several important matters affecting the authorization for the annual revenue forgone appropriation. A copy of the text of section 15103 and of the relevant portion of the Statement of Managers is enclosed for your reference.

As you know, the First Session of the 99th Congress adjourned prior to final action on the Conference Report. Consideration is expected to resume when Congress reconvenes later this month.

Because of the importance of the issues which would be addressed in the study, and the desirability of obtaining the Commission's findings and recommendations in time for consideration during the FY 1987 budget cycle, we respectfully request the Commission to proceed immediately with the study as if section 15103 had been enacted. We ask also that the Commission be further guided by the portion of the Statement of Managers pertaining to section 15103. The Postmaster General will be informed of our request and will be asked to ensure that the Commission receives the Postal Service's full cooperation, as called for by section 15103.

We sincerely appreciate your efforts.

With kind regards,

Sincerely,

William D. Ford,

Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives.

Ted Stevens,

Chairman, Subcommittee on Civil Service, Post Office and General Services, Committee on Governmental Affairs, U.S. Senate.

cc: The Honorable Albert V. Casey

Attachment B

Sec. 15103. Study and Report.

(a) Period of Study.—The Postal Rate Commission shall study and, within 6 months after the date of the enactment of this Act, transmit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a written report on the matters described in subsection (b).

(b) Purpose of Study.—The purpose of the study under this section is—

(1) to develop recommendations for legislation which would reduce the amount of revenue forgone with respect to former sections 4355(a), 4355(b), 4358(d), 4452(b), 4452(c), 4554(b) and 4554(c) of title 39, United States Code, by changing the eligibility requirements under which the reduced rates of postage under those sections would apply to mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements;

(2) (A) to identify the kinds of mailers which are the most frequent users of, or which otherwise significantly benefit from, rates for mail under subsections (a), (b), and (c) of former section 4358 of title 39, United States Code; and

(B) to examine the arguments for and against making the eligibility requirements for the rates referred to in subparagraph (A) more stringent, taking into consideration—

(i) the findings under subparagraph (A);

(ii) costs and benefits to the public; and

(iii) any other factor which may be appropriate; and

(3) to develop one or more alternatives for the method currently used by the United States Postal Service in computing revenue forgone (as determined with respect to the provisions of law referred to in section 2401(c) of title 39, United States Code) and to determine the advantages and disadvantages of each such alternative.

(c) In preparing its report under this section, the Postal Rate Commission shall invite and consider the views of interested parties.

(d) The United States Postal Service shall, upon request of the Postal Rate Commission, cooperate in the conduct of the study and the preparation of the report under this section.

Attachment C—Postal Service Issues

1. Reduction of Authorization for Revenue Forgone

House Provision: The House bill (Sec. 7104(a)) limits the FY 1986 authorization for the "revenue forgone" appropriation to $749 million. (The revenue forgone appropriation subsidizes the postage rates paid by nonprofit organizations and other "preferred rate" mailers.)

Senate Provision: The Senate bill (Sec. 801) contains a substantially similar provision.

Conference Agreement: The conference agreement contains the House language.

2. Reduction of Transitional Appropriation

House Provision: The House bill (Sec. 7104(b)) reduces to zero the amount authorized to be appropriated for FY 1986 for the transitional appropriation to the Postal Service. (The transitional appropriation is used by the Postal Service to reimburse the Department of Labor for workers' compensation costs arising from injuries to employees of the pre-1971 Post Office Department). The House bill further provides that the amount which would have been authorized for this appropriation for FY 1986 shall be authorized for FY 1989, in addition to the amount already authorized for FY 1989 pursuant to 39 U.S.C. 2004. The House bill provides further that the Postal Service's obligations for FY 1986 shall be met using any amounts in the Postal Service Fund.

Senate Provision: The Senate bill (Sec. 802) provides that no funds shall be appropriated for the FY 1986 transitional appropriation prior to FY 1989.

Conference Agreement: The conferees agree to delete both provisions.

3. Delay of Step 16 Rates to January 1, 1986

Senate Provision: The Senate bill (Sec. 803) provides that the increase in postage rates for nonprofit organizations and certain other mailers announced by the Postal Service Board of Governors on September 6, 1985, shall not take effect until January 1, 1986. The Senate bill also amends section 3626(a) of title 39, United States Code, to eliminate the rate "phasing" schedule and provide that effective January 1, 1986, the rates paid by nonprofit organizations and other affected mailers will recover the full costs attributable to their mail.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment making it clear that the rate increase announced by the Board of Governors in Resolution No. 85–7 shall not take effect before January 1, 1986 and that any changes in rates shall be established in accordance with chapter 36 of title 39, United States Code. Additional, in order to obtain needed savings, the conferees agree to eliminate the authorization for that part of the revenue forgone appropriation which makes possible the "limited circulation" second-class rate. The conferees intend that this rate be eliminated upon enactment.

4. Appropriation Ceiling and Study Concerning Third-Class Commercial Material Mailed at Reduced Rates

Senate Provision: The Senate bill (Sec. 804) reduces by 50 percent the authorized appropriation for FY 1987 and FY 1988 for third-class nonprofit bulk rate mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements. The Senate bill also directs the Postal Rate Commission to prepare and transmit to Congress within 6 months of enactment a report containing legislative recommendations to achieve the required 50 percent savings. The Commission's study shall also include second-class nonprofit rate and fourth-class library rate mail. The Commission is to invite and consider the views of all interested parties.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment striking the mandatory authorization reduction but directing that the Postal Rate Commission conduct an expanded study covering three subject areas. The first subject shall be the use of third-class nonprofit bulk rate mail, second-class nonprofit mail, and fourth-class library rate mail for advertising, promotion, and solicitation purposes (as provided for and defined in the Senate bill). The second subject shall be the general use of the second-class "in-county" publication rate. The focus of the Commission's inquiry in this area shall be the accumulation and synthesis of data and information concerning the number and types of publications which use this subsidized rate, the users' needs for this rate, and the potential impact both on the publications and on their readers of further modification or total elimination of the authorization for this rate. The conferees take specific note of their agreement in section 15104 to amend the Senate bill's provision concerning eligibility for the in-county rate by deleting the limit of 20,000 copies per issue. The conferees hereby direct the Postal Rate Commission to include in its study a specific determination of the number and types of publications which would have been adversely affected had the 20,000 "cap" remained in the new 39 U.S.C. 3626(f). The third subject for the Commission's study is the accuracy, or inaccuracy, of the current method of computing revenue forgone and the development and assessment of alternative methods. The Postal Service is to cooperate fully in the conduct of every phase of the study (including the provision to the Commission of adequate financial, technical, and personnel resources).

5. Restriction of Eligibility for In-County Second-Class Rates of Postage

Senate Provision: The Senate bill (Sec. 805) amends 39 U.S.C. 3626 by limiting application of the in-county rate (which is subsidized by the revenue forgone appropriation). The rate shall not apply to an issue of a publication if the number of copies of that issue distributed within the county of publication is less than half of the issue's total paid circulation. This limitation shall not apply if the issue's total paid circulation is less than 10,000 copies. In no case shall the rate apply to more than 20,000 copies of an issue.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment striking the Senate provision which would have limited applicability of the subsidized rate to not more than 20,000 copies of any issue. The conferees note that this provision will be a subject of the study to be conducted by the Postal Rate Commission pursuant to section 15103.

6. Curbing of Subsidies for Advertising/Oriented "Plus Issues" Mailed to Subscribers at In-County Rates

Senate Provision: The Senate bill (Sec. 806) further amends 39 U.S.C. 3626 with regard to application of the subsidized in-county rate to nonsubscriber copies of subscription publications. The number of nonsubscriber copies to which the rate is applied in any calendar year may not exceed 10 percent of the number of copies mailed to subscribers in that year.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes.

[FR Doc. 86–2010 Filed 1–29–86; 8:45 am]
BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14909; File No. 812–6195]

Application and Opportunity for Hearing; Century Life of America et al.

January 22, 1986.

Notice is hereby given that Century Life of America (the "Company"), Century Variable Account (the "Separate Account") and Century Investors of America, Inc., (the "Underwriter") underwriter of the Separate Account (the Company, the Separate Account and the Underwriter are collectively referred to as "Applicants"), at Heritage Way, Waverly, Iowa 50677, filed an application on September 3, 1985, and amendments thereto on November 21, 1985, and December 18, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the Act and Rules 22c–1, 6e–3(T)(b)(12)(ii) and 6e–3(T)(b)(13)(iv) thereunder, to permit the deduction of a contingent deferred administrative charge in connection with Applicants' offering of flexible premium variable life insurance contracts. 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 and rules thereunder for the complete text of those provisions that are relevant to the application.

Applicants propose to offer certain flexible premium variable life insurance contracts ("Contracts") funded by the Separate Account. The Separate Account, which is registered as a unit investment trust under the Act, will invest in shares of Ultra Series Fund. Ultra Series Fund is an open-end diversified management investment company comprised of four different series: Money Market Series, Common Stock Series, Balanced Series and Bond Series.

The Contract provides death protection until the Contract anniversary following the insured's 95th birthday. Subject to certain limitations, a Contractowner may vary the frequency, timing and amount of premium payments. The amount that

underlines a Contract is referred to as the Accumulated Value. The Cash Value of the Contract is the Accumulated Value less the deferred charges, described below. The Net Cash Value of the Contract is the Cash Value minus any Contract indebtedness. The Contract provides that the owner may withdraw all or a part of the Net Cash Value of the Contract.

Applicants propose that in the event of a total withdrawal of Net Cash Value and termination of the Contract prior to the end of the 9th Contract year, a deferred administrative charge ("Deferred Charge") be deducted from the Cash Value that is paid to the owner. The amount of this charge would accrue at the time the Contract is issued. Collection of the charge, however, would be deferred until such time as the Contract is surrendered and contingent in that it would not be collected unless the Contract is surrendered during the first nine years following its issuance. There is also assessed a deferred sales charge which is applied in a similar manner.

Applicants state that accrual of the Deferred Charge increases monthly during the first Contract year in twelve equal increments to the total first year Deferred Charge set out in the Contract, which is a charge per $1,000 of Specified Amount based on issue age. Then the Deferred Charge decreases annually after the first Contract year. If the Specified Amount is increased after the Contract's date of issue, an additional Deferred Charge will be assessed as though a new Contract had been issued for the amount of the increase. This additional Deferred Charge will decrease over nine years from the date of the increases as if it were assessed to a new Contract. Applicants state, however that no additional Deferred Charge will be assessed for increases in Specified Amount due to changes from death benefit option 2 to death benefit option 1. There is no decrease in the deferred charge if the Specified Amount is decreased.

Applicants state that they intend to have the Deferred Charge set aside in a portion of the general account of the Company, which Applicants refer to as the Deferred Charges Account. The Deferred Charges Account is intended for both the Deferred Charge and the deferred sales charge. Applicants propose to place the first month's portion of the Deferred Charge in the Deferred Charges Account at the time the Contract is issued or the Specified Amount is increased. This amount will earn interest at a minimum rate of 4% per annum, with the Company crediting additional interest, at its option from time to time. At the next monthly anniversary, taking into account the interest earned, the Company will transfer from the Separate Account the amount necessary to equal the then current Deferred Charge. The Company will do the same each month during the first year of the Contract. The Deferred Charge for the second Contract year are 95% of the first year Deferred Charge. Therefore, the Company will release on the first monthly anniversary of the second Contract year that amount in the Deferred Charges Account that is in excess of 95% of the first Contract year Deferred Charge, taking into account the interest earned. This process will continue each year until the Deferred Charges Account becomes zero at the end of ten years or until the Contract is surrendered. If an additional Deferred Charge is incurred, it will be treated in the same manner.

Applicants request exemption from sections 2(a)(32), 22(c), 27(c)(1), 27(d) and Rules 22c-1, 6e-3(T)(b)(12)(ii) and 6e-3(T)(b)(13)(iv) thereunder to the extent necessary to permit the deduction of the Deferred Charge in the manner described in the application.

Applicants state that permitting the Deferred Charge upon lapse or total surrender of the Contract has several advantages over a charge that is deducted entirely from premiums in the first year, which is the conventional way of making this charge. Applicants assert that Contractowners benefit by having the charge deferred because the amount of the Deferred Charge is set aside in the Deferred Charges Account and earns interest. The Deferred Charge is released from the Deferred Charges Account to the Separate Account until the amount to be assessed by the Company upon lapse or complete surrender is zero. Thus, if a Contractowner does not lapse or completely surrender his Contract prior to the end of the ninth year, he will not be subject to a lump sum payment of the costs of Contract issuance. In addition, if the insured dies within the first nine years, the Company does not assess the Deferred Charge from any death benefit payable under the Contract. An additional benefit, Applicants argue, is that the deductions for the cost of insurance may be lower because the net amount at risk may be less when administrative charges are deferred rather than deducted up front. Applicants state that the Contract has been designed to "phase-in" the first year Deferred Charge, which benefits the Contractowners by not having the entire amount set aside in the Deferred Charges Account at the time the Contract is issued. Applicants represent that if a Contractowner surrenders during the first year the Company forebears the collection of that portion of the first year charge that has not yet been transferred to the Deferral Charges Account. Applicants represent that other Contractowners are not assuming any shortfall when this occurs.

Applicants state that the use of the Deferred Charges Account enables the Company to offer a Contract with deferred charges because when the underlying assets constituting the portion of the Contract values needed to secure the Company's right to deferred charges are held in a separate account, statutory reserve laws and regulations for life insurance companies in most jurisdictions ignore the value of what amounts to the Company's funded claim for such deferred charges. Instead, they require that the entire amount held in the separate account be reported as an unqualified reserve liability. Furthermore, Applicants assert, the financial impact of this accounting treatment is exacerbated because the actual expenses which the Company incurs when it sells and issues the Contract serve to reduce surplus. Applicants state that these considerations led to the product design feature of segregating the deferred charges in the Company's general account.

Applicant state that in addition to the Deferred Charge, there is a Monthly Policy Fee of $6.25 which is deducted each month from the Accumulated Value of the Contract. Applicants represent that the Monthly Policy Fee is guaranteed for the life of the Contract. Applicants state that it has been set at a level to cover the annual cost of Contract maintenance, to reimburse the Company for first year administrative expenses, and to contribute to the surplus of the Company to the extent necessary to cover the anticipated increase in expenses in the future, thus enabling them to guarantee this charge. Applicants state that in establishing the level of the constant Monthly Policy Fee, the Company took into account, among other things, the amortization of the first year administrative fee, as well as an expected inflation factor used in the determination of the portion of the Monthly Policy Fee covering the annual cost of Contract maintenance. Applicants represent that the Monthly Policy Fee, in conjunction with the Deferred Charge and the manner in which it is deducted, has been designed so that the Company only recovers once its first year administrative costs.

Applicants state that the Company, in establishing these charges, did so with the intent of complying with the "at cost" requirement of Rule 6e–3(T). Applicants assert that the deduction of the Deferred Charge only upon lapse or complete surrender is fair to both surrendering and persisting contractowners. Applicants state that while the Company is willing to finance these costs out of its surplus and then recover the cost out of the Monthly Policy Fee for Contractowners who persist, it is not possible to so recover such costs from Contractowners who lapse or surrender in the early years of the contract. If the Company is not permitted to charge for these first year expenses in the form of a charge deducted upon lapse or surrender, Applicants state, it would have to deduct such a charge from all Contractowners at the time the Contract is issued, thus denying persisting Contractowners the benefit of having such costs amortized and deducted as part of the Monthly Policy Fee. Applicants represent that the Deferred Charge does not take into account the likelihood that not all Contractowners will lapse or surrender their Contracts (which would increase the charge for those surrendering or lapsing over what they would have paid had all Contractowners been required to pay this charge).

Applicants further represent that the Deferred Charge and the Monthly Policy Fee do not take into account the time-value of money (which would increase the charges to factor in the investment costs to the Company of deferring the charge).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, 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. 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–2091 Filed 1–29–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14910 (No. 812–6198)]

Paine Webber Inc., et, al.; Application for an Order Amending an Existing Order and Permitting Certain Additional Offer of Exchange

January 22, 1986.

Notice is Hereby Given that Paine, Webber Municipal Bond Fund Series, The Municipal Bond Fund Series, The Municipal Bond Trust Series, The Municipal Bond Trust Insured Series, The Municipal Bond Trust Multiple Maturity Series, The Multi-State Program Series, The Municipal Bond Trust Discount Series; The Corporate Bond Trust Series, The Corporate Bond Trust Discount Series; The PaineWebber Pathfinders Trust, Treasury and Growth Stock Series; The PaineWebber Federal Government Trust, Stripped Treasury Series, The PaineWebber Equity Trust (any one individually, the "Trust", or, collectively, the "Trusts"), all unit investment trusts registered or to be registered under the Investment Company Act of 1940 (the "Act") and PaineWebber Incorporated, sponsor of the Trusts (the "Sponsor") (collectively with the Trusts, "Applicants"), c/o PaineWebber Inc., 1285 Avenue of the Americas, New York, NY 10020, filed an application on September 10, 1985, and an amendment thereto on December 27, 1985, for an order of the Commission pursuant to section 11 of the Act: (1) Amending a prior order issued by the Commission approving certain offers of exchange (the "Exchange Option"); (2) approving, on substantially identical terms, an offer of exchange for Trusts not included in the prior order, including future unit investment trusts to be sponsored by the Sponsor (the "Future Trusts"), and (3) approving an additional offer of exchange that Applicants propose to extend to holders of any registered unit investment trust with a minimum sales load of 3%, exclusive of any available sales charge discounts such as volume discounts, employee discounts and exchange option discounts (the "Conversion Option"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants state that each Trust is a separate unit investment trust created by a separate trust agreement, each series of which has different investment objectives. Applicants also state that purchasers of units of any of the Trusts ("Certificateholders") will receive interest and principal distributions on a monthly or semi-annual basis, such distributions representing their proportionate share of interest and principal received in the respective Trust net of expenses and amounts required for redemptions of units.

Applicants represent that the Future Trusts will also be registered unit investment trusts under the Act, and that the Future Trusts will be structured and will function in substantially the same manner as the Trusts. With respect to the prospective relief sought on behalf of the Future Trusts, Applicants under take to limit their activities, as they relate to the Exchange and Conversion Options, to the terms and conditions represented in the application.

By an order isssued on September 10, 1980 (Investment Company Act Release No. 11344), the Commission permitted certain Trusts to participate in an Exchange Option. Applicants now request approval to expand this Exchange Option to all Trusts and Future Trusts (Trusts and Future Trusts, collectively, "Exchange Trusts"), subject to the modifications and conditions set forth in the application.

According to the application, although the composition of particular Exchange Trusts and the particular series thereof differ in various respects depending on the nature of the underlying portfolios, their structures are substantially the same. The Sponsor acquires a portfolio of securities that it believes satisfies the standards applicable to the investment objectives of the particular series; the securities are then deposited in trust with the Trustee in exchange for certificates representing units of undivided interest in the deposited portfolio ("Units"). These Units are then offered to the public at a public offering price that is based upon the offering prices of the underlying securities plus a sales charge, which is generally 4.50% of the public offering price.

Under the Exchange Option, Certificateholders may exchange Units that they hold in any one of the Trusts for Units of other series of the same Trust or of any of the other Trusts that the Sponsor has repurchased and has not tendered for redemption. Although the Sponsor is not legally obligated to do so, the Sponsor intends to maintain a secondary market for Units of the

Exchange Trusts and to continuously offer to purchase Units at prices based upon the market value determined in the manner set forth in the prospectus. The Exchange Option would apply only to Units of the Exchange Trusts for which a primary or secondary market is being maintained by the Sponsor. Upon notifying the Sponsor of a desire to exercise the Exchange Option, a Certificateholder will be delivered a current prospectus for one or more series of the Exchange Trusts for whcih the Certificateholder has indicated an interest and for which the Sponsor has Units available to offer in exchange for the Units being tendered.

Applicants contend that the Exhange Option transactions will operate in a manner essentially identical to secondary market transactions, except that the Sponsor intends to impose a reduced sales charge on certain exchanges. Generally, Units repurchased by the Sponsor have been resold by the Sponsor at a public offering price based upon the market value of the underlying securities plus a sales charge of up to 5.50% of the public offering price. Pursuant to the Exchange Option, Applicants intend to permit the Sponsor to sell Units of the Exchange Trusts at the net asset value per Unit (the "Unit Offering Price"), plus a fixed sales charge of $15 per Unit or per 1,000 Units for a series whose Units cost approximately $1.00 (the "Reduced Sales Charge"). Applicants represent that the Reduced Sales Charge can be expected to approximate 1.5% of the Unit Offering Price.

Applicants represent that a Certificateholder who purchased Units of a series and paid a per Unit or per 1,000 Unit sales charge that was less than the per Unit or per 1,000 Unit sales charge of the series of the Exchange Trusts for which such Certificateholder desires to exchange into, will be allowed to exercise the Exchange Option at the Unit Offering Price plus the Reduced Sales Charge, provided the Certificateholder held the Units for at least five months. Any such Certificateholder who has not held the Units to be exchanged for the five-month period will be required to exchange them at the Unit Offering Price plus a sales charge based on the greater of the Reduced Sales Charge, or an amount which, together with the intial sales charge paid in connection with the acquisition of the Units being exchanged, equals the sales charge of the series of the Exchange Trust for which the such Certificateholder desires to exchange into, determined as of the date of the exchange.

According to the application, the minimum period for differentiating between short-term and long-term capital gains and losses under the Internal Revenue code of 1954 ("Code") for property acquired on or after June 23, 1984, and before January 1, 1988, is currently "more than six months," increased from "more than one year." Applicants submit that many exchanges between Exchange Trusts may be motivated by the desire to take profits as soon as the preferential long-term capital gains treatment under the Code is available; or conversely, to realize short-term capital losses to be applied to reduce taxable income—an objective which could be impeded by an Exchange Option holding period requirement that exceeds six months. Therefore, in order to permit the Exchange Option to be utilized without forfeiting any such tax benefits, Applicants proposed that the five-month holding period described above be instituted in place of the present eight-month holding period requirement in the prior order. Applicants assert that this modification would not materially reduce the protection against unfair pricing afforded by the holding period requirement, and that it would meet the objective of conforming such requirement to the terms of current federal income tax policy.

Under the Exchange Option, Certificateholders will be further permitted to tender cash to make up any difference between the value of the Units being submitted for exchange and the value of the Units being acquired up to the next highest number of whole Units. Applicants assert that permitting Certificateholders to round up to the next highest number of Units does not create any significant potential for abuse or unfairness in pricing.

In addition to the Exchange Option, Applicants request an order to permit the Exchange Trusts to offer, on terms substantially the same as those applicable to the Exchange Option (including the ability to round up to the next highest number of whole Units), Units in exchange for beneficial interests in any and all registered unit investment trusts that were initially offered to the public at a minimum sales charge of 3%, exclusive of customary sales charge discounts, such as volume discounts, employee discounts or exchange option discounts (the "Conversion Trusts"). Applicants submit that the minimum sales load condition applied to the Conversion Option diminishes any potential for unfairness or price discrimination and discourages Certificateholders from converting their units merely to pay a lower aggregate sales charge.

Applicants represent that unit investment trusts promoted by the Sponsor, but not included among the Exchange Trusts, may nonetheless be Conversion Trusts. All holders of Conversion Trusts will be eligible to participate in the Conversion Option regardless of whether they are or were the Sponsor's retail customers, and regardless of whether the Sponsor participated as an underwriter or dealer in the original public offering of any of the Conversion Trusts. While holders of Conversion Trusts interests will, in general, be eligible to acquire Units of an Exchange Trust based on the Reduced Sales Charge, Applicants represent that in the future, and as a condition to the granting of the order requested, the Sponsor will not charge more than five dollars per Unit more for exercise of the Conversion Option than the corresponding fee being charged for excercise of the Exchange Option. The Sponsor intends to hold the Exchange and Conversion Options open under most circumstances, but reserves the right to modify, suspend or terminate them subject to the terms and conditions of Rule 22d-1 under the Act.

Applicants submit that the Reduced Sales Charge is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses contemplated in connection with the Exchange and Conversion Options. Applicants also submit that it is not abusive or unfair to permit purchasers who originally acquire Units at a discounted sales charge to participate in the proposed offers of exchange. The Sponsor represents that it will not solicit Certificateholders with respect to the Exchange or Conversion Options with a view to churning Certificateholders' accounts and that the proposed transactions will be done for the benefit of Certificateholders and in accordance with their investment objectives.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than February 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the 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(s) 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.

John Wheeler,

Secretary.

[FR Doc. 86-2092 Filed 1-29-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received within 15 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer Promptly.

COPIES: Copies of the survey, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538;

OMB Reviewer: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785;

Title: Survey of small federal contractors denied contracts awards on the basis of the Walsh-Healey Public Contracts Act;

Frequency: One time, non-recurring;

Description of Respondents: Small firms denied contracts on the basis of Walsh-Healy.

Annual Responses: 30;

Annual Burden Hours: 7.5;

Type of Request: New Collection.

Dated: January 22, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-2023 Filed 1-29-86; 8:45 am]

BILLING CODE 8025-01-M

Designation of Disaster Loan Area #2226; New Jersey

The area affected is 613-647 Mattison Avenue, Asbury Park, Monmouth County, New Jersey. This constitutes a disaster area because of damage resulting from a fire which occurred on November 25, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 24, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally anounced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222605 for physical damage and for economic injury the number is 636300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 23, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86-2026 Filed 1-29-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0339]

Sprout Capital Corp.

Notice is hereby given that Sprout Capital Corporation, 140 Broadway, New York, New York 10005, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958 (the Act). Sprout Capital Corporation was licensed on May 2, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender to the license was accepted on January 7, 1986, and accordingly all rights and privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Program No. 59.011, Small Business Investment Companies).

Dated: January 21, 1986.

Robert G. Lineberry,

Deputy Associates Administrator for Investment.

[FR Doc. 86-2027 Filed 1-29-86; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The President Advisory Committe on Small and Minority Business Ownership, located in Washington, DC, will meet on February 24, 1986, at 9:00 a.m. until 5:00 p.m., 200 North Spring Street, City Hall, City Council Chambers, Room 340, Los Angeles, California 90012, with Committee members, representatives from the large corporate sector, small and small minority entrepreneurs, local officials and associations to discuss availability of procurement, capitalization and marketing assistance from the private sector. The meeting will be open to all interested persons, however, space is limited.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6526.

Dated: January 22, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86-2024 Filed 1-29-86; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in

terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective February 1, 1986, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.365% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling that the Regulation imposes. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Pub. L. 99–226, December 28, 1985, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: January 23, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–2025 Filed 1–29–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86–010]

Aquatic Resources Trust Fund; Availability of Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: The Boat Safety Account of the Aquatic Resources Trust Fund; Notice of Availability of Fiscal Year 1986 Funds for financial assistance to national nonprofit public service organizations.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities.

Applicability

The Coast Guard has fiscal year 1986 funds available to provide financial assistance to national nonprofit public service organizations to help them conduct selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level. Innovative approaches are welcome.

Statement of Funds Availability

Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 per cent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $750,000 is available for the fiscal year ending September 30, 1986. This amount is subject to change based on impacts of the Balanced Budget and Emergency Deficit Control Act of 1985. Sixteen grant awards totaling $650,000 were made in fiscal year 1985; awards ranged from $10,000 to $66,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. It is anticipated that several awards will be made by the Chief, Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard.

DATE: All proposals must be submitted by April 25, 1986.

Applications, Instructions and Forms

Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF424) may be obtained from Commandant (G–BP/42), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 or by telephoning Mr. Ladd Hakes at (202) 426–1062.

Federal Domestic Assistance Catalog

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 24, 1986.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86–2093 Filed 1–29–86; 8:45 am]

BILLING CODE 4910-14-M

[CGD 86–005]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 27 February 1986 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m and end at 4:00 p.m. The agenda is expected to be as follows:

1. TSAC discussion and/or deliberation concerning the following past agenda items:

(a) Air Quality: Vapor Control/Recovery
(b) Revisions of Rules for Cargo Barges Carrying Dangerous Bulk Liquid Cargoes
(c) IMO Status Report
(d) Tankerman Requirements: Qualifications of Persons in Charge of Oil Transfer Operations
(e) Intervals for Drydocking and Tailshaft Inspections
(f) Licensing of Maritime Personnel
(g) Certification of Seamen
(h) Waste Reception Facilities
(i) Licensing of Pilots; Manning of Vessels—Pilots
(j) Inspection Intervals for Pressure Vessels and Cargo Tanks
(k) Vessel Documentation

2. Presentation of the following new items:

(a) Coastwise Loadline Certificates for Certain Barges
(b) Tug-Rider Program
(c) Maritime Occupational Health Statistics
(d) OSHA's Proposed Benzene Standard
(e) Any other matter properly brought before the committee.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting.

For further information contact: Captain R. F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593, (202) 426–1477.

Dated: January 27, 1986.

R. F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86–2094 Filed 1–29–86; 8:45 am]

BILLING CODE 4910-14-M

[CGD 86–006]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is

hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on 26 February 1986 in Room 3328–30 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, D.C. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:

(a) Air Quality: Vapor Control/Recovery
(b) Vapor Emissions from Vessels
(c) Tankerman Requirements
(d) Intervals for Drydocking and Tailshaft Examination on Inspected Vessels
(e) Inspection Intervals for Pressure Vessels and Cargo Tanks
(f) Licensing of Pilots; Manning of Vessels–Pilots

3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained form Captain R.F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593 or by calling (202) 426–1477.

Dated January 27, 1986.

R.F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86–2095 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C App. I) notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on Febraury 25–26, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Committee Meeting Held on November 7–8, 1985; (3) Review of Task Assignments from Previous Meeting; (4) Continue Drafting the Final Committee Report; (5) Assignment of Tasks, and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on January 21, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86–2014 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Wasatch County, UT

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 a proposed highway project in Wasatch County, Utah.

FOR FURTHER INFORMATION CONTACT: William R. Gedris, Environmental Coordinator, Federal Highway Administration, 125 South State Street, P.O. Box 11563, Salt Lake City, Utah 84147, Telephone: (801) 524–6446, or R. James Naegle, Engineer for Location and Environmental Studies, Utah DOT, 4501 South 2700 West, Salt Lake City, Utah 84119, Telephone: (801) 965–4160.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 189 in Wasatch County, Utah. The proposed improvement would involve the up-grading of the existing 15-mile roadway segment between Wildwood and Heber City. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands, improve safety, eliminate substandard geometrics and reduce maintenance costs.

Alternatives under consideration include: (1) Taking no action; (2) reconstruction along existing facility; (3) spot improvements to correct deficiencies of the existing roadway; (4) a new routing to the east of the existing roadway [along the east canyon wall]; and, (5) a new routing to the west of the existing roadway (continuing along the west shore of the Deer Creek Reservoir). Incorporated into and studies with the various build alternatives will be design variations of roadway cross section and construction methods.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A formal scoping meeting with appropriate agencies will be held in early 1986. A series of public meetings will be held between February and December, 1986. In addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: January 24, 1986.

Daniel Dake,

Division Administrotor, FHWA.

[FR Doc. 86–2015 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–22–M

Urban Mass Transportation Administration

Intent to Prepare an Environmental Impact Statement; San Francisco, CA

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement is being prepared for the proposed San Francisco Municipal Railway (MUNI) Metro Turnaround Project in downtown San Francisco, California.

The San Francisco Municipal Railway (Muni), an operational branch of the City and County of San Francisco Public Utilities Commission (PUC), proposes to construct a track extension and turnaround facility for the Market Street subway with UMTA federal capital grant assistance and local funding. The proposed action would provide a more

efficient and flexible track configuration with needed storage and maintenance facilities beyond the downtown terminus of the existing MUNI Metro subway. While the proposed action would also allow for a future southerly extension of the MUNI Metro System, such extension is not being considered as part of this proposed action.

A range of alternatives will be considered and evaluated in the EIS. The alternatives in the EIS include the no action alternative and the following alternatives: a stub end turnback facility and three loop turnaround facility concepts under lower Market Street, Justin Herman Plaza, the surface trolley bus turnaround, and Steuart Street.

The proposed action would be entirely underground, with the exception of street level vents and emergency access provision. It would be constructed by tunnelling and/or cut and cover methods. During construction, impacts could be expected in the general area of lower Market Street, Justin Herman Plaza and portions of Steuart Street. Such impact would include noise and vibration during construction, traffic and pedestrian disruption, interruption of public use of portions of Justin Herman Plaza, potential for movement of BART tunnels, potential for settling of some adjacent buildings, and possible disruption of buried archaeological resources in the area. After completion of construction, no significant long term adverse impacts are currently expected. Beneficial impacts resulting from improved transit service would occur.

To effect scoping, UMTA hereby solicits comments for consideration and possible incorporation in the Draft EIS. As indicated in the Council on Environmental Quality's guidelines, issues and impacts shall be discussed in proportion to their significance. A public meeting will be held during the scoping period to facilitate receipt of comments. The scoping meeting is Wednesday, March 5, 1986, 7:00 P.M. at Port Commission Hearing Room Suite 3100, Ferry Building, San Francisco, California. In order that comments may be considered in a timely fashion, correspondence should be received not later than 30 days after the scoping meeting. A more detailed description of the proposed project, alternatives and expected impacts will be available at the scoping meeting.

Comments and questions regarding this Environmental Impact Statement should be addressed to:

Mr. Everett M. Hintze, Project Manager, Utilities Engineering Bureau, San Francisco Public Utilities Commission, 693 Vermont Street, San Francisco, CA 94107, (415) 550–6530

or

Mr. Stuart Eurman, Urban Mass Transportation Administration, 211 Main Street, Suite 1160, San Francisco, CA 94105, (415) 974–7543

Copies of an information packet which gives more detailed information about the project, alternatives and expected impacts are available at the above address.

Dated: January 22, 1986.

Brigid Hynes-Cherin,

Regional Administrator, UMTA Region IX.

[FR Doc. 86–2101 Filed 1–29–86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center; National Center for State and Local Law Enforcement Training Advisory Committee; Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training, Treasury.

ACTION: Notice of meeting.

SUMMARY: The agenda of this meeting includes opening remarks by the Director and Deputy Director of the Federal Law Enforcement Training Center and Committee Co-Chairs; summary of present and past training activities; and old and new business.

DATE: February 19, 1986.

ADDRESS: Auditorium, Building 18, Federal Law Enforcement Training Center, Pinal Air Park, Marana, Arizona 85653.

FOR FURTHER INFORMATION CONTACT: R. J. Miller, Assistant Director, Office of State and Local Training, Federal Law Enforcement Training Center, Glynco, GA 31524 (912–267–2345).

Signed: January 15, 1986.

Charles F. Rinkevich,

Director.

[FR Doc. 86–1239 Filed 1–29–86; 8:45 am]

BILLING CODE 4810-32-M

UNITED STATES INFORMATION AGENCY

Grants; Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of two institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright teacher Exchange Program provides opportunities for U.S. teachers to exchange positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC, with schools or colleges of education and located within reasonable proximity of Washington, DC's international gateway airports are invited to submit project proposals for a grant. Universities and colleges in California with schools or colleges of education and located in San Francisco or Los Angeles or within reasonable proximity of one of those cities' international gateway airports are invited to submit project proposals for a grant. We anticipate the grant period running from May, 1986, through July, 1987. Primary activity periods will be from May, 1986, through October, 1986, and March 1987, through May, 1987.

For an application, please contact Mr. David N. Levin no later than February 14, 1986, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–2555.

Dated: January 27, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–2066 Filed 1–29–86; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held February 5, 1986, in Room 600, 301 4th Street, SW., Washington, DC at 10:45 a.m.

The Commission will meet with Mr. Stanley Silverman, Director, Office of the Comptroller, USIA, to discuss the impact of the Gramm-Rudman legislation on USIA's budget. The Commission will also meet with Mr. Charles Horner, Associate Director for Programs, Mr. Michael Schneider, Deputy Associate Director for Programs, and Mr. John Kordek, Director, Office of European Affairs, to discuss U.S. public diplomacy programs relating to the economic and U.S./Soviet summit meetings in 1986.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: Janaury 27, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-2067 Filed 1-29-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Rescheduled Meeting

The meeting of the advisory Committee on Former Prisoners of War originally scheduled for January 21 and 22, 1986 (51 FR 810, January 8, 1986) has been rescheduled for March 19 and 20, 1986. The sessions will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC. All sessions will be open to the public and will be held from 9 a.m. to 4 p.m.

Dated: January 22, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-2031 Filed 1-29-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

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

1

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:52 p.m. on Friday, January 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Utah FirstBank, Salt Lake City, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Friday, January 24, 1986; (2) accept the bid for the transaction submitted by Citibank (Utah), Salt Lake City, Utah, a newly-chartered State nonmember bank; (3) approve the applications of Citibank (Utah), Salt Lake City, Utah, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Utah FirstBank, Salt Lake City, Utah, for consent to establish the sole branch of Utah FirstBank as a branch of Citibank (Utah), and for consent to interchange and redesignate the main office location at 3135 South 1300 East, Salt Lake City, Utah, as a branch and the branch location at Two Main Street, Salt Lake City, Utah, as the main office; and (4) provide such financial assistance, prusuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Pioneer State Bank, Salt Lake City, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Friday, January 24, 1986; (2) accept the bid for the transaction submitted by Zions First National Bank, Salt Lake City, Utah; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 28, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2169 Filed 1-28-86; 2:53 pm]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 4, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-2156 Filed 1-28-86; 1:23 pm]

BILLING CODE 6715-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m. February 5, 1986.

PLACE: Hearing Room One 1100 L Street, NW., Washington, DC 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Discussion of the Jurisdictional Aspects of Effective Agreement No. 231-010846: Marine Terminal Conference Agreement Between Maryland Port Administration and Baltimore Marine Terminal Association.
2. Proposed Rulemaking to Revise Service Contract Regulations.

CONTRACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-2170 Filed 1-28-86; 3:02 p.m.]

BILLING CODE 6730-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 9:30 a.m., Thursday, February 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;
2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;
3. Local Union 1609, UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C.

(Issues in these cases involve the interpretation and application of 30 U.S.C. 821, the compensation provisions of the Mine Act.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider and act upon the above listed cases.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–2109 Filed 1–28–86; 10:27 am]

BILLING CODE 6735–01–M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, February 12, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 84–89. (Issues include whether the administrative law judge properly concluded that the operator violated its roof control plant and that it was negligent in connection with another violation of its roof control plan.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 84–89.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR. Doc. 86–2107 Filed 1–28–86; 10:25 am]

BILLING CODE 6735–01–M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, February 19, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Cotter Corporation, Docket No. WEST 84–26–M. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR 57.18–25 (1984), a mandatory safety standard dealing with miners who are working alone.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider the following:

1. Cotter Corporation, Docket No. WEST 84–26–M.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–2108 Filed 1–28–86; 10:26 am]

BILLING CODE 6735–01–M

7

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 10:00 a.m. February 28, 1986.

STATUS: Open and Closed.

ADDRESS: Members Room, Administration Building, Atlanta Botannical Garden, 1345 Piedmont Road, Atlanta, GA 30357.

FOR FURTHER INFORMATION CONTACT: Mr. Robin N. Rapp, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of February 28, 1986 will be open to the public from 10:00 a.m. through discussion of agenda item number IV. The meeting will be closed to the public for a review of agenda item number V pursuant to paragraphs 6, 9 (B), and other relevant provisions of subsection (c) of Section 552 of Title 5, United States Code because the Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede impementation of proposed agency actions related to the grant award process.

National Museum Services Board

February 28, 1986 Meeting Agenda

I. Approval of Minutes of November 8, 1985 NMSB Meeting
II. Director's Report
III. Program Report
  A. GOS
  B. CP
  C. MAP
IV. Other Business
V. Closed Session

Dated: January 28, 1986.

Monika Edwards Harrison,

Acting Director.

[FR Doc. 86–2149 Filed 1–28–86; 12:44 pm]

BILLING CODE 7036–01–M

Federal Register

Thursday
January 30, 1986

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Site Security and Noncompliance Provisions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the existing regulations implementing the Federal Oil and Gas Royalty Management Act of 1982 that were added to the Code of Federal Regulations by final rulemakings that were published in the **Federal Register** on July 11, 1983 (48 FR 31789) and September 21, 1984 (49 FR 37356). The proposed rulemaking addresses provisions for site security; noncompliance with the provisions of the Act, any mineral leasing law, any regulation, order or notice issued thereunder, or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance or nonabatement; and the procedures for review or relief. The proposed rulemaking also would make nonsubstantive technical corrections such as the updating of form numbers and correction of errors.

DATE: Comments should be submitted by March 31, 1986.

Comments received or postmarked after this date may not be considered in the decisionmaking process on issuance of a final rulemaking.

In addition, the Bureau of Land Management will conduct public hearings on this proposed rulemaking at the times and addresses set out in the address section of this preamble. Transcripts will be made of the public hearings and will be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, N.W., Washington, D.C. 20240.

The location and dates of the public hearings are as follows:

Washington D.C., Department of the Interior Auditorium, 1800 C Street, N.W., Washington, D.C. 20240, March 12, 1986, 9:30 a.m.

Denver, Colorado, Executive Towers, 1405 Curtis, Denver, Colorado 80202, (303) 571–0300, March 18, 1986, 9:00 a.m.

Albuquerque, New Mexico, Albuquerque Hilton, 1901 University Blvd., N.E., Albuquerque, New Mexico 87102, (505) 884–2500, March 19, 1986, 9:30 a.m.

Bakersfield, California, Hilton Inn, Sycamore Room, Sutter Street Bar & Grill, 3535 Rosedale Highway, Bakersfield, California 93308, (805) 327–0681, March 20, 1986, 9:00 a.m.

Casper, Wyoming, Holiday Inn, 300 West F Street, Casper, Wyoming 82601, (307) 235–2531, March 19, 1986, 9:00 a.m.

Billings, Montana, Northern Hotel, Broadway & First Avenue North, Billings, Montana 59101, (406) 245–5121 March 20, 1986, 1:00 p.m.

Salt Lake City, Utah, BLM State Office, 4th Floor Conference Room, 342 South State Street, Salt Lake City, Utah 84111, (801) 524–3000, March 19, 1986, 10:00 a.m.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This proposed rulemaking would revise the regulations in 43 CFR Part 3160 which incorporate the operational requirements of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and also would revise the regulations that implement provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.). The implementation of these regulations has been criticized as being unnecessarily complex, exceeding the Congressional intent, and being inadequate or vague in dealing with several of the requirements of the Act.

On January 12, 1983, the Federal Oil and Gas Royalty Management Act was signed into law. The purposes of the Act are to assure proper and timely revenue accountability, address Outer Continental Shelf matters and lease reinstatement, and to prescribe onshore field operations requirements for inspections and enforcement actions, to establish the basis for cooperation with States and Indian Tribes, and to establish duties of lessees, operators and other persons involved in production, storage, measurement, and transportation or sale of oil and gas.

A final rulemaking implementing the site security aspects of the Federal Oil and Gas Royalty Management Act was published in the **Federal Register** on July 11, 1983 (48 FR 31978), with an effective date of September 9, 1983. A final rulemaking implementing the penalty and other provisions of the Act relating to onshore operations was published in the **Federal Register** on September 21, 1984 (49 FR 37356), with an effective date of October 22, 1984. On January 4, 1985, a cap on assessments was instituted by a policy directive from the Director, Bureau of Land Management.

As a result of the numerous concerns expressed by both Bureau of Land Management officials and representatives of the oil and gas industry, the Bureau held a number of public meetings during January and February 1985, to allow concerned members of the public to identify the specific issues which they felt needed review. Approximately 145 individuals presented comments at the eight public meetings held on impact of the Federal Oil and Gas Royalty Management Act regulations. The major concerns expressed at these public meetings were that: the regulations exceeded Congressional intent by establishing immediate assessments for certain acts of noncompliance, particularly for minor violations; the amount of assessments under 43 CFR 3163.3 are not related to loss or damages; the Act was designed to assure correction of serious violations, therefore, penalties are incorrectly applied to minor violations; the terms "knowingly or willfully" and "new or resumed production" are vague and needed clarification; requirements for seals are too complex; enforcement of the regulations was inflexible and provided little discretion for Bureau

officials to consider appropriate mitigating factors; penalty point systems are unworkable and too complex; holding lessees responsible for operators' noncompliance has an adverse effect on capital; penalties should not continue while a case is under technical and procedural review or appeal; any list of potential violations should be developed in accordance with the Administrative Procedure Act; compliance on minor items that do not affect royalty are not cost effective; and some Bureau inspectors lack technical background and training.

As a result of the comments received at these public meetings, the Bureau of Land Management established certain interim procedures and published a Notice of Intent to Propose Rulemaking in the **Federal Register** on March 22, 1985 (50 FR 11517). The Notice requested suggestions from interested parties regarding the extent to which the regulations needed to define more clearly operational requirements of the Federal Oil and Gas Royalty Management Act and other oil and gas leasing laws, and regarding the development of a list of potential violations. A total of 68 comments were received, which included written summaries of meetings conducted in accordance with the invitation contained in the Notice of Intent to Propose Rulemaking.

In addition to requesting public input through the Notice of Intent to Propose Rulemaking, the Bureau of Land Management also has taken interim actions to:

(1) suspend the use of the assessment for noncompliance provisions of 43 CFR 3163(c) through (j); (2) suspend the application of administrative penalties under 43 CFR 3163.4–1(a), except for failure to abate major violations that are required to be corrected in less than 20 days and which have the immediate potential to affect public health and safety, cause significant environmental damage, affect production or royalty accountability, or those where drilling or other operations are conducted without prior approval; (3) delay processing of assessments made for noncompliances and nonabatement for the period of October 22, 1984 to January 4, 1985, pending a rule from the Comptroller General regarding the Bureau's authority to give retroactive application to the new "cap" policy on all prior Bureau assessments; (4) clarify the meaning of the term "knowingly or willfully"; (5) clarify the requirement for fifth business day notification of new or resumed production pursuant to 43 CFR 3163.4–1(b); and (6) clarify circumstances which can be considered under the technical and procedural review provisions of 43 CFR 3165.3.

Of the 68 comments received in response to the Notice of Intent to Proposed Rulemaking, 39 were from individual operators and lessees supporting the specific recommendations provided jointly by the Rocky Mountain Oil and Gas Association, the Independent Petroleum Association of Mountain States, the Independent Petroleum Association of America and the Independent Petroleum Association of New Mexico. The joint industry trade associations' workgroup reviewed and analyzed the existing regulations and provided specific comments. In addition, several other comments provided detailed proposals and rationale for amending the existing regulations.

Several comments suggested changes in the provisions in the existing regulations dealing with Applications for Permits to Drill, Subsequent Well Operations and other existing regulations that do not deal with issues related to the Federal Oil and Gas Royalty Management Act. These issues are not included in this proposed rulemaking and are being referred to appropiate Bureau of Land Managment officials to consider whether they should be made part of a proposed rulemaking at a later date.

Comments

Definitions—§ 3160.0–5

"New or Resumed Production"

Several comments suggested that the regulations more clearly define when the fifth business day notification is required (i.e., when a well begins production or resumes production). This suggestion has been adopted in the proposed rulemaking. With minor modifications, the definition of such New or Resumed Production that appeared in the interim guidelines has been included in this section of the proposed rulemaking.

"Gravity of Violations"

Several comments expressed concern that the basis for classifying violations as minor, moderate or major was not clear, and requested further definition of those terms. To simplify the enforcement process, the proposed rulemaking drops the "moderate" classification of violation and defines the terms "major violation" and "minor violation".

"Knowingly or Willfully"

At least 18 comments expressed concern that the phrase "knowingly or willfully," as used in the penalty provisions of section 109 (c) and (d) of the Federal Oil and Gas Royalty Management Act, was too vague and should be defined to include only intentional acts. In response to these comments, the proposed rulemaking includes a definition of the term "knowingly or willfully" which would make it clear that this term does not encompass the performance of a prohibited act or the non-performance of a required duty whenever such a violation results from mere inadvertence or an honest mistake. However, the term "knowingly or willfully" does not require a specific intent to violate the law or criminal purpose. A voluntary or conscious performance of the act which is prohibited, or a failure to act in the case of a required duty, with disregard of or indifference as to whether the behavior is lawful, or as demonstrated by repeated behavior, is sufficient to constitute a violation "knowingly or willfully" committed.

Lessees and operators of Federal oil and gas leases are charged with the responsibility of being knowledgeable of the rules which regulate their operations. The Bureau of Land Management has determined for some requirements, such as the fifth business day notice of new or resumed production required by section 102(b)(3) of the Federal Oil and Gas Royalty Management Act, that it may be appropriate to give further, specific notice to lessees and operators. In cases where such actual notice is given, any subsequent or continued violations in that respect necessarily will be construed as having been "knowingly or willfully" committed.

Jurisdiction—Section 3161.1

The preamble to the final rulemaking published on September 21, 1984, stated that the Bureau of Land Management had limited authority over non-Federal and non-Indian sites within federally supervised unit and communitization agreements. It did not specify which regulations were applicable to such operations. This proposed rulemaking clarifies that, unless additional responsibilities are specified in the formal agreement, regulations related to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through unitization, communitization, or similar agreements.

Site Security, Seals and Signs—Sections 3162.6 and 3162.7

Numerous comments were received on site security, seals and signs, with more than 24 comments being received on site security issues, 16 comments were received on seals and 16 comments were received on signs.

Several comments suggested that the Bureau of Land Management revise the regulations so that they more closely follow the intent of the law as to site security and seals. Several comments noted that "the regulations should be focused on site security and on preventing theft." Other comments indicated that the seals and records mandated by § 3162.7–4(b) of the existing regulations, provide accountability, but do not prevent theft. Others comments stated that "seals should be required only on high visibility points where there is a potential for large volume theft. Seals should only be required on storage tanks, not on treaters, separators, headers, equalizer lines etc." Numerous comments stated that the use of seals required too much paperwork and expense, did not prevent theft and that there was a lack of uniform enforcement.

The Bureau of Land Management has reviewed all of the comments in the context of the intent and actual requirements of the Federal Oil and Gas Royalty Management Act. After a review with Bureau field officials and visits to oil fields, it was determined that the regulations relating to site security and seals should be revised to follow more closely the intent and language of the Act, to emphasize production accountability, and to provide local flexibility to Bureau managers to address the varying oil field characteristics and differences. The proposed rulemaking revises the requirement for seals so that they would be applicable to the storage and sales facilities only and would clarify the existing regulations to provide uniformity in use and enforcement. While the use of seals was never intended to prevent theft, their use is considered to provide accountability and to serve as a deterrent, as well as a detection mechanism of theft. The proposed rulemaking would not require the sealing of thief hatches. However, the public is invited to provide its comments and recommendations about whether the minimum standards should include protection of thief hatches, or other possible access points.

Conduct of Operations—Section 3162.3

The provisions covering the serving of orders, instructions, or notices that appear in § 3162.3(b) of the existing regulations would be removed from that section by the proposed rulemaking and combined into a single § 3163.5(a) in the proposed rulemaking.

Well Identification—Section 3162.6

Several comments expressed concerns over well identification signs. One comment expressed the view that many citations relating to well signs were for defects which are "cosmetic" in nature. Another comment suggested that a better approach to the well sign issue would be to have only one key sign on each lease site giving full identification with individual wells identified only with their unique number. The authorized officer then could assess individual situations and give approval to modify sign requirements based on individual unique site conditions. Since it is the intent of these regulations that transporters, purchasers, government inspectors and other concerned parties be able to properly identify the well site or facility for operational purposes, the proposed rulemaking has adopted these suggestions. Identification of facilities would be deleted from § 3162.7–4(b)(6) of the existing regulations and added to this section by the proposed rulemaking so that all such requirements would be in one place in the regulation.

Site Security—Section 3162.7–4

This section would be revised by the proposed rulemaking to clarify the circumstances under which variances could be granted. Generally, it is expected that the minimum seal standards would apply to operations nationwide, but that variances may be granted to all or part of the seal requirements if an operator requests a variance in writing and presents an acceptable program and plan to minimize the possibility of oil theft, to ensure production and sales accountability, or to ensure internal control procedures to greatly limit outside access. It is intended that the variance provision, as it relates to site security and seal standards could allow for a situation where an operator would submit a program for fenced, 24-hour guarded facilities with internal company control procedures identified to meet the goals of the regulations in lieu of the minimum seal and other security standards. Such an alternative to the minimum standards should meet, or exceed, the objectives of the minimum standards with emphasis on preventing theft by external and internal company persons, ensuring proper accountability for all production and sales, and maintaining limited access to sites. The authorized officer would approve or disapprove such a proposal pursuant to § 3162.7–4 (c) and (d) of the proposed rulemaking.

Several comments suggested that 30 days after a well or facility is either completed or comes under Federal jurisdiction was not sufficient time to provide facility diagrams and to prepare site security plans. This suggestion was adopted and the proposed rulemaking would change the requirement for such diagrams and plans to 60 days. However, site security and measurement requirements would remain effective from the start of production.

Also, several comments suggested that site security diagram and plan requirements should not apply to dry gas wells. The Bureau of Land Management accepts this comment and will continue the existing practice in most States that only those gas wells that have storage facilities for condensate will require compliance with the minimum site security requirements. The definition of the term "oil" in § 3000.0–5(b) includes all non-gaseous hydrocarbons.

Assessments—Section 3163.3

Almost every comment raised objections to the assessments under this section and their relationship to the penalties under the various Acts for the leasing of minerals as well as the Federal Oil and Gas Royalty Management Act. The assessments for specific acts of noncompliance were not changed by the final rulemaking of September 21, 1984, except that assessments on a daily basis were reduced to one-time charges. These assessments were a direct continuation of liquidated damages, under former 30 CFR § 221.52, which have been part of the oil and gas lease operating regulations since at least 1942. It should be noted that the assessment of damages for a violation of operating rules or orders under the Mineral Leasing Act of 1920 has been upheld by the United States Court of Appeals for the Ninth Circuit (*Forbes* vs. *U.S.*, 125 F. 2d 404 (C.A. 9, 1942)). In that case, the assessment was upheld pursuant to section 189 of the Mineral Leasing Act which authorizes the Secretary of the Interior to prescribe "necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act." The primary change occurred when these assessments were

administratively made automatic, without an opportunity for prior corrective action. This policy change occurred at the same time the new penalty system became effective, and the result was to magnify the effect of each. While comments expressed almost unanimous objection to the imposition of automatic assessments for minor violations, many saw the continuing need for immediate assessments as an effective regulatory tool for the more serious major violations. The comments of the joint industry workgroup suggested significantly increased amounts for certain major violations.

In response to these comments, the proposed rulemaking would retain automatic assessments on a daily basis for certain specific major violations and would cap them at specified amounts. However, the suggestion to distinguish between automatic assessment amounts for unauthorized drilling based on whether or not a plan has been filed has not been adopted in the proposed rulemaking. The controlling issue is drilling without approval and no distinction should be made based on whether or not a plan has been filed. In addition to assessments previously discussed, the Bureau of Land Management's predecessors (the Minerals Management Service during 1982 and the Conservation Division of the U.S. Geological Survey prior to January 1982) imposed penalties under the same authority discussed above and under 30 U.S.C. 188(a), which provides that "the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." Since oil and gas leases specifically incorporate the operating regulations by reference, and a more effective enforcement provision was deemed necessary, that provision was promulgated as 30 CFR 221.53 in the regulations finalized October 27, 1982 (47 FR 47758). It should be noted that this provision was issued as a proposed rulemaking on November 17, 1981 (46 FR 56564).

Upon the enactment of the Federal Oil and Gas Royalty Management Act, these penalties were continued in the regulations at 43 CFR 3163.4–1(a) and the amount modified to be consistent with the new penalties under the Act. The retention of the penalties under the Mineral Leasing Act was necessary for the 20 day period preceding the ability to impose penalties under the Federal Oil and Gas Royalty Management Act to provide a method of dealing with those major violations which, if not sooner corrected, could subject either the environment, public health and safety or Federal royalty interest to unacceptable levels of loss or damage. It was felt that the retention of the Mineral Leasing Act assessments and penalties was authorized by section 304(a) of the Federal Oil and Gas Royalty Management Act which states that the penalties provided therein are "supplemental to, and not in derogation of, any penalties or authorities contained in any other provisions of law."

It should be noted that the imposition of assessments and penalties under this section are not limited to the Mineral Leasing Act and/or statutes which adopt that Act's procedures by reference. These penalties apply to operations conducted on any onshore oil and gas lease administered by the Bureau of Land Management. For this reason, the proposed rulemaking deletes any reference to the "Mineral Leasing Act." The public should note that the proposed rulemaking supersedes the penalty provisions relating to Indian lands found in 25 CFR 211.22 to the extent that they apply to oil and gas lease operations (See 43 CFR 3165.2). The Department of the Interior does not intend to have this proposed rulemaking weaken in any way its enforcement responsibility on Indian leases. However, maintaining a uniform assessment system will promote the effectiveness and the efficiency of enforcement activity everywhere and will avoid confusion among the operators as to which regulations govern their activity.

While some comments questioned the legal basis for penalties under the various Acts authorizing the leasing of minerals in light of the specific grant of authority in the Federal Oil and Gas Royalty Management Act, the joint industry association workgroup comments, as well as a significant number of those commenting and speaking at the public meetings who addressed this issue, proposed retaining these penalties for those limited situations where enforcement is needed in less than 20 days. The proposed rulemaking retains the "penalties" imposed by the various Acts authorizing mineral leasing for nonabatement of major violations which have the immediate potential to affect public health and safety, cause significant environmental damage, or to affect royalty income, or for conducting operations without prior approval, and for continuous disregard of orders. This proposed rulemaking would combine this provision and the provisions for assessments into one section.

The Bureau of Land Management's responsibility for verifying production from Federal and Indian oil and gas leases requires that information contained on the Monthly Report of Operations (Form 3160–6) be timely and accurately submitted as required by § 3162.4–3 of the existing regulations. Although no specific provision is included in this proposed rulemaking, the public is specifically requested to comment on whether the failure or repeated failure to file Form 3160–6 should result in automatic assessments under § 3163.3 and, if so, what assessment amount would be appropriate.

As intended by § 3165.2 of the existing regulations, the assessment and penalty provisions of these regulations (both in §§ 3163.3 and 3163.4) will be used by authorized officers of the Bureau of Land Management for noncompliance and nonabatement of violations on Federal and Indian leases. Any penalty provisions contained in Title 25 of the Code of Federal Regulations will be used only by the superintendent or his/her representative with regard to noncompliance with any lease terms or regulations in Title 25.

Penalties—Section 3163.4

There were numerous comments urging that the operator be given warning or notice before a penalty is imposed. For violations subject to penalties pursuant to §§ 3163.4–1(a) and 3163.4–1(b)(1) and (2) of the existing regulations, warning and notice are provided, since the penalties would be imposed only if the operator failed to abate within the time allowed.

In the proposed rulemaking, the same type of notice and time for abatement would be included for similar types of violations. However, in §§ 3163.4–1(b)(4) through (6) of the existing regulations, penalties are implemented immediately upon discovery. These violations are specified in the Federal Oil and Gas Royalty Management Act and no grace period is suggested or required. They are not normal "operating" violations, but include transporting oil without appropriate documentation and knowingly or willfully handling or selling stolen oil. The proposed rulemaking would contain similar language.

A few comments stated that the current penalties do not allow for timely effort to comply. The existing regulations require that an abatement period by indicated on the notice of the violation to the operator/lessee. It is implicit that the abatement period be reasonable. This understanding is

reinforced by the requirement in both the existing regulations and the proposed rulemaking that the reasonableness of the abatement period is a factor to be considered on review.

Numerous comments alleged that the "penalty formula," and related tables were too complex, without statutory foundation, arbitrary and violated the Federal Oil and Gas Royalty Management Act. The proposed rulemaking does not include a "penalty formula" system but instead, would provide that the initial proposed penalty shall be at the appropriate maximum rate contained in the regulation, subject to adjustment by the State Director in the administrative review process.

A few comments suggested that penalties should apply only to violations involving loss, or potential loss, of royalty. Section 109(a)(1) of the Federal Oil and Gas Royalty Management Act defines coverage for penalties to include "* * * this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder * * *" Accordingly, the proposed rulemaking would continue the current broader coverage.

Two comments pointed out that penalties must be significant, in order to discourage theft and noncompliance. On the other hand, two comments suggested that penalties should not exceed the potential loss to the United States. Penalties, by definition, are punitive and are not solely to recover cost or damage. The legislative history of the Federal Oil and Gas Royalty Management Act supports this view, as do the specific penalty provisions of the Act. The penalties provided in this proposed rulemaking are those suggested by the Act and are supported by numerous comments, including the joint industry association workgroup. Accordingly, the proposed rulemaking uses the same penalty ranges included in the Act.

The provision of § 3163.4–1(d) of the existing regulations concerning the establishment of a detailed list of potential violations would be deleted by the proposed rulemaking. The inclusion of items in a listing of common violations does not, in and of itself, constitute a sufficient reason for those listed items to be considered violations in every instance. The list used by the Bureau of Land Management to provide guidance to its field personnel, as well as to operators, has resulted in a great deal of misunderstanding as to its application. It did not receive public review or comment prior to its issuance. Accordingly, the Bureau is withdrawing the list and intends to provide necessary guidance and standards through development of Onshore Oil and Gas Orders.

Orders will be developed for all appropriate phases of drilling and production and will contain the requirements and standards applicable to such operations on Federal and Indian lands. The Orders will also describe enforcement actions to be taken if violations occur, as well as provisions for variances or adoption of local standards. Initial Orders likely will deal with site security, oil and gas measurement, drilling operations, water disposal, and operations in a hydrogen sulfide enviroment. Comments are specifically requested on which phases of industry's operations should have priority in development of these Orders, and on how current industry standards (API, AGA, etc.) should be incorporated. As described in § 3164.1 of the existing regulations, all Orders will be published for public comment prior to being finalized. After development of appropriate Orders, all requirements and standards will be compiled into a document which would be available to all interested parties. During the interim period, existing manuals, instruction memoranda, and other documents will continue to be used to provide guidance to field mangers.

Notice, Review, and Appeal—Section 3165.3

Several comments suggested that more flexibility be given to the local level for consideration of extenuating circumstances in the review process. These suggestions have been adopted by the proposed rulemaking. Section 109(e) of the Federal Oil and Gas Royalty Management Act provides that no penalty shall be assessed until the involved person has been given an opportunity for a hearing on the record. This has been interpreted as a hearing before an Administrative Law Judge. However, in an effort to provide for a review by Bureau of Land Management officials, and thereby reduce the need for subsequent administrative reviews before final resolution, the proposed rulemaking provides that any aggrieved party contesting a notice of violation, assessment or penalty shall first request a review by the State Director. Thereafter, any party aggrieved by the decision of the State Director may, in the case of: (1) a notice of violation or assessment, appeal that decision to the Interior Board of Land Appeals; or (2) a penalty, may request a hearing on the record before an Administrative Law Judge or appeal directly to the Interior Board of Land Appeals. However, since section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of a proposed penalty only where a person has requested a hearing on the record, an election to appeal a decision of the State Director on a penalty directly to the Interior Board of Land Appeals could preclude further appeal to the District Court. The public is specifically requested to comment on this issue.

The factors to be considered in this administrative review have been expanded by the proposed rulemaking to include any relevant facts. One comment proposed that the operator be given the option of an immediate appeal to the inspector to clarify issues. This was not considered appropriate because the inspector's function is to identify the violation and the operator is given the opportunity for both a review and an appeal to other higher levels. However, operators are encouraged to discuss issues and conflicts informally with local Bureau of Land Management officials prior to initiating the formal review, hearing or appeal process.

Several comments were received proposing that reasonable abatement times be given. The existing regulations already provide for this. Some comments proposed that the instruction or order appealed and the penalty for nonabatement be automatically suspended during the review or appeal period. This proposal has not been adopted in the proposed rulemaking since the current regulations provide the reviewing official with the option to suspend on a case-by-case basis, and because there may be some cases where automatic suspension may not be appropriate.

Technical Corrections

In several places, the proposed rulemaking makes "technical" corrections, such as changing from numbers from Geological Survey numbers to Bureau of Land Management numbers or changing the term "supervisor" to "authorized officer."

In past revisions of the regulations in 43 CFR Part 3160, the requirements for prior approval of commingling of production and for off-lease storage and measurement of production were inadvertently omitted. These requirements would be reinstated by this proposed rulemaking, since both proper production and royalty accounting could be affected.

One comment requested that the proposed rulemaking allow operators of wells on State lands or on privately-owned minerals which are committed to a Federal unit or communitization agreement a 60-day grace period following such commitment to come into

compliance with applicable Federal regulations. This request has not been adopted by the proposed rulemaking because of the Federal responsibility for verification, well and facility identifications and site security. The Bureau of Land Management has immediate responsibility to ensure site security, measurement and production accountability for all wells producing from, or allocating production to, Federal and/or Indian leases. The Bureau cannot allow the production from such wells to be potentially mishandled, mismeasured, or to be vulnerable to undetected theft for 60 days. The existing regulations already provide a timeframe for the completion of site security plans and diagrams and this proposed rulemaking would extend that period to 60 days, but the minimum standards for actual compliance at the site must be met. However, the public is invited to comment on the issue because it is recognized that there is some additional burden on the operators of such wells at the time they are formally committed to federally approved unit or communitization agreements.

Encouraging Operator Self Compliance

The Bureau of Land Management encourages operators to take initiatives to identify and report violations of the regulations and to take prompt and effective corrective action. Encouragement of self compliance by operators appears to have been the intent of parts of the Federal Oil and Gas Royalty Management Act and the Linowes Report. Comments are solicited on benefits that might be given to operators who initiate reporting of violations and demonstrate an active interest in self compliance.

Although not currently a part of the proposed rulemaking, the following examples illustrate possible methods of encouraging self compliance:

(a) The authorized officer will not use such reported violations in making operator compliance profiles and history for the purpose of determining frequency of inspections for leases;

(b) The authorized officer will utilize this demonstration of cooperation by the operator as a positive factor in mitigating the amount of any proposed penalty if the reported violation, assessment, or penalty is later challenged in any appeal proceeding; and

(c) The authorized officer will not count a self initiated report of a major violation toward the requirement in section 3163.3(a)(4) of the proposed rulemaking providing for immediate assessment for a third or subsequent violation, except that under no circumstance shall more than two such exceptions be allowed in any 24-month period. Under this section of the proposed rulemaking, no immediate assessment would be imposed until the fifth major violation (two reported by the operator) and each subsequent occurrence of any major violation per lease, per operator have occurred.

Significant Differences Between Proposed and Previous Rulemakings

The significant changes contained in this proposed rulemaking relate to site security requirements (§ 3162.7–4), assessments under the various Acts authorizing the leasing of minerals (§ 3163.3), penalties under the Federal Oil and Gas Royalty Management Act (§ 3163.4) and technical procedural review procedures (§ 3165.3).

Site security requirements have been simplified and clarified by the proposed rulemaking to require that all lines entering or leaving tanks shall be effectively sealed during the production or sales phases, as appropriate. Those components of Automatic Custody Transfer (ACT) metering systems that affect volume or quality determinations also would be required to be sealed. Provisions for obtaining variances also would be clarified and certain requirements for dry gas wells would be deleted.

Assessments under the various Acts authorizing the leasing of minerals would be modified by the proposed rulemaking to eliminate automatic assessments for non-compliance involving violations of §§ 3163.3 (d), (e), (g), (h), and (j) of the existing regulations. Certain specified serious violations would result in assessments upon finding. Nonabatement of any major violations within the time allowed for correction would result in daily assessments of $500 per violation through the 20th day. Disregard of an order to correct a minor violation would be subject to a single assessment of $250 for nonabatement within the time provided. Penalties under the Federal Oil and Gas Royalty Management Act for continued nonabatement beyond 20 days would be at the rate of $500 per day for each major violation and $50 per day for each minor violation. Major violations would be capped at $1,000 per operator, per lease, per day and minor violations would be capped at $100 per operator, per lease, per day; therefore, a total cap of $1,100 per day (two majors plus two minors) would be applicable for nonabatement of both major and minor violations per operator, per lease. If nonabatement continues beyond 40 days, the penalty in the proposed rulemaking would be $5,000 per day for each major violation and $500 per day for each minor violation to a maximum of 60 days. A total cap of $11,000 per day would be applicable for nonabatement of both major and minor violations per operator, per lease. The penalty point tables have been deleted by the proposed rulemaking and maximum amounts would be used.

The technical and procedural review process would be modified by the proposed rulemaking to provide that an operator may request an administrative review by the State Director. The factors to be considered during review would be modified so that all appropriate relevant factors may be considered in reviewing both the violation and penalty.

When reviewing this proposed rulemaking, it should be remembered that the existing definition of the term "lease" in 43 CFR 3160.0–5 includes unit and communitization agreements approved under the various Acts authorizing the leasing of minerals.

The principal authors of this proposed rulemaking are Frank Salwerowicz, Gene Daniel, and Tom Leshendok, members of the Bureau of Land Management's Task Force responsible for reviewing and analyzing the issues involved with implementing the Federal Oil and Gas Royalty Management Act. The Task Force was assisted by Bureau field officials from the Montana, Wyoming, Colorado, Utah, New Mexico, California, and Eastern States offices, by officials of the Washington office, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior. Ken Moyers, Minerals Management Service, was also part of the Task Force and provided input on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The cost or economic effect of the proposed rulemaking will be minimal or nonexistent so long as operators comply with the requirements or take corrective action in a timely manner.

There are no additional information collection requirements contained in this proposed rulemaking requiring the

approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930, (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Note 1, *Operating Forms,* is amended as follows:

A. In the first column, the number "9–330" is removed and replaced with the number "3160–4", the number "9–329/329A" is removed and replaced with the number "3160–6", the number "9–331" is removed and replaced with the number "3160–5" and the number "9–331C" is removed and replaced with the number "3160–3";

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due" is removed and replaced the word "Filed"; and

C. In the third column, the number "1010–0004" is removed and replaced with the number "1004–0137", the number "1010–0005" is removed and replaced with the number "1004–0138", the number "1010–0002" is removed and replaced with the number "1004–0135" and the number "1010–0003" is removed and replaced with the number "1004–0136".

3. Note 1, *Other Operating Requirements,* is amended by removing from where it appears the phrase "Clearance Number 1010–0001" and replacing it with the phrase "Clearance Number 1004–0134".

§ 3160.0–5 [Amended]

4. Section 3160.0–5 is amended by:

A. Amending the term "*avoidably lost*" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "*notice to lessees and operators (NTL)*" by removing from where it appears the word "DMM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District or Area";

C. Amending the term "*waste of oil or gas*" by removing from where it appears the word "Supervisor" and replacing it with the pharse "authorized officer";

D. Adding the following terms to read:

"*Knowingly or willfully.* A voluntary or conscious performance of an act which is prohibited, or a failure to act in the case of a required duty, with disregard of or indifference as to whether that behavior is lawful, or as demonstrated by repeated behavior, is sufficient to constitute a violation 'knowingly or willfully' committed. It does not require a specific intent to violate the law or criminal purpose, and the knowing or willful nature of a prohibited act or failure to act is not negated or mitigated by a belief that the bahavior is reasonable or legal.".

"*Major violation.* Noncompliance which has the immediate potential to affect public health and safety, cause significant environmental damage, or affect production accountability or royalty income.";

"*Minor violation.* Noncompliance which does not have the immediate potential for loss or damage as described by the definition of 'major violation.' ";

"*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.* The date on which a well commences production, or resumes production after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

* * * * *

(b) In accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Governmental entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§ 3162.3-1 [Amended]

9. Section 3162.3-1(d) is amended by removing from where it appears the phrase "Form 9-331c" and replacing it with the phrase "Form 3160-3."

§ 3162.3-2 [Amended]

10. Section 3162.3-2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals, conversion".

§ 3162.3-3 [Amended]

11. Section 3162.3-3 is amended by removing from where it appears the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5".

§ 3162.4-1 [Amended]

12. Section 3162.4-1(b) is amended by removing from where it appears the phrase "Form 9-330" and replacing it with the phrase "Form 3160-4".

§ 3162.4-3 [Amended]

13. Section 3162.4-3 is amended by:

A. Amending the title by removing from where it appears the phrase "(Form 9-329 Public; Form 9-329A Indian)" and replacing it with the phrase "(Form 3160-6)"; and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9-329" and replacing it with the phrase "Form 3160-6", by removing from where it appears the phrase "in duplicate" and by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each drilling, producing, injection, or abandoned well. The well sign shall include the well number, the name of the operator, the lease serial, unit or communitization agreement number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs now in place which do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All adandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a permanent monument may be waived in writing by the authorized officer.

§ 3162.7-2 [Amended]

15. Section 3162.7-2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by".

§ 3162.7-4 [Amended]

16. Section 3162.7-4 is amended by:

A. Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read "*Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation."; and

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Automatic Custody Transfer (ACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the ACT. All components of the ACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the ACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the ACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) Where oil is soil via hand gauged volumes, the operator shall minimize the time that oil is stored on leases to that time needed to accumulate an economic run, except that the operator may retain whatever oil is needed for use on the lease and store oil to provide for proper delivery of royalty oil. For oil measured and sold by hand gauging, all appropriate valves, including sales and equalizer valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator shall deal promptly with any accumulations of oil in pits or tanks in accordance with the provisions of § 3162.7–1 of this title and applicable NTLs or onshore Orders.

(7) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(8) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by applicable NTL's or onshore Orders while the oil is being removed and transported.

(9) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(10) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section will be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" x 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, and metering system which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed in either the opened or closed position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 3163.1 [Amended]

17. Section 3163.1 is amended by removing from where it appears the phrase "and to assess penalties and/or liquidate damages" and replacing it with the phrase "and to impose assessments or penalties."

18. Section 3163.3 is revised to read:

§ 3163.3 Assessments.

(a) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. The following violations shall result in immediate assessments, which may be retroactive, upon discovery in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500;

(4) For the third and each subsequent occurrence of any major violation other than those listed in subparagraphs (1) through (3) of this paragraph, per lease, per operator during a 24-month period, $500 upon discovery, with a cap of $1,000 per inspection. Failure to abate shall be subject to paragraph (c) of this section and § 3163.4 of this title, as appropriate;

(b) Other instances of noncompliance shall be subject to the following assessments:

(1) For failure to comply with a notice, written order or instruction of the authorized officer, $250 upon discovery of nonabatement for a minor violation. For a major violation, failure to abate within the time allowed shall be subject to paragraph (c) of this section and § 3163.4 of this title, as appropriate;

(2) For failure to perform any operation ordered in writing by the authorized officer, if said operation is thereafter performed by or through the authorized officer, the actual cost of the performance and an additional 25 percent of such amount to compensate the United States for administrative costs;

(3) Where actual losses or damages to the lessor can be ascertained in amounts larger than those set forth above, such larger amounts shall be assessed;

(c) Upon finding of any major violation requiring an abatement period of less than 20 days from the date of notice, a notice shall be issued describing the violation, setting forth that abatement period and indicating a daily assessment of $500 for each day

nonabatement continues from the end of the abatement period through the 20th day following the date of receipt of the notice. Should nonabatement continue beyond the 20th day, penalties provided in § 3163.4 of this title shall be implemented and shall supersede the assessments provided in this paragraph. Assessments under this section shall not exceed $1,000 per day, per operator, per lease for each inspection.

19. Section 3163.4–1 is redesignated as § 3163.4 and is revised to read:

§ 3163.4 Penalties.

(a) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.3 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) Where a penalty under paragraph (a) or (b) is imposed for a minor violation, it shall be imposed only after the operator/lessee has failed to correct the violation within the initial abatement period allowed, and specific notice to the operator/lessee has been provided granting an extension of the abatement period which will not be less than 20 days. Failure to correct the violation within this subsequent abatement period will subject the operator/lessee to civil penalties under paragraph (a) and/or (b) of this section. Under paragraph (a) of this section, the initial penalty shall be at a daily rate of $50 and under paragraph (b) of this section at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, or $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocated to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.4–1.

21. A new § 3163.4–2 is added to read:

§ 3163.4–2 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.3 or § 3163.4 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.3(c)(4) of this title. The Federal Oil and Gas Royalty Management Act requires that

any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation "3163.4–1" and replacing it with the citation "3163.4" and by removing from where it appears in paragraph (c) the citation "3163.4–1(b)" and replacing it with the citation "3163.4".

23. Section 3165.3 is revised to read:

§ 3165.3 Notice, review and appeal.

Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations.

(a) *Notice.* Written orders or a notice of violation or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on his/her behalf. If no designation pertaining to the lease has been filed, any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. Notice of a major violation may also be served on any operator's representative as previously described. A copy of all orders, notices, or instructions served on any contractor shall also be mailed to the lessee or the lessee's designated representative as described above. Any notice involving a civil penalty shall be mailed to the lessee of record.

(b) *Review.* A person charged with a violation and served with a notice of assessment or penalty under this section may request a review before the State Director as provided herein within 10 business days of receipt of notice.

(1) *Review of notices of violations and assessments.* Any aggrieved person who contests a notice of violation or assessment shall request an administrative review, before the State Director, either with or without oral argument. Such request, including all supporting documentation, shall be filed in writing within 10 business days of the date such notice of violation or assessment was received or considered to have been received and shall be filed with the appropriate State Director. Such review shall include all relevant factors including, but not limited to, the following:

(i) Whether a violation actually existed and, if so, whether the corrective action required was reasonable, whether gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed.

(ii) Effect of the assessment and/or proposed penalty on the continued operation of the well or lease for the conservation of oil and gas.

(iii) Potential for loss or damage to the resource, the public, the environment or the Federal or Indian interest due to the nonabatement.

(iv) Extenuating circumstances which hampered or delayed a good faith effort by the operator to achieve compliance timely.

(v) Any person who is aggrieved by the State Director's decision may appeal that decision to the Interior Board of Land Appeals under part 4 of this title.

(2) *Review of penalties.* Any aggrieved person wishing to contest a notice of proposed penalty shall request an administrative review before the State Director, as provided in paragraph (b)(1) of this section. Any person aggrieved by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or may appeal that decision directly to the Interior Board of Land Appeals under part 4 of this title. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. No civil penalty shall be assessed under this section until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals under part 4 of this title. In lieu of a hearing on the record, any party aggrieved by the State Director's decision on a proposed penalty may appeal directly to the Interior Board of Land Appeals under part 4 of this title. However, if the right to a hearing is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act may be precluded.

(c) *Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a request for administrative review or, where oral argument has presented, within 10 business days therefrom. Such decision shall represent the final decision from which an appeal may be taken under part 4 of this title, or in the case of a proposed penalty, from which either a hearing on the record may be requested or an appeal taken.

(d) *Appeals.* (1) Any request for an administrative review, hearing on the record, or appeal under this section shall not result in a suspension of the requirement for compliance with the notice of violation or stop the daily accumulation of assessments or penalties, unless the official to whom the request is made or appeal is taken so determines.

(2) Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review only where a person has requested a hearing on the record, a waiver of such review shall preclude further appeal to the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of the Secretary's final order.

§ 3165.4 [Amended]

24. Section 3165.4 is amended by revising the first sentence thereof to read "Instructions, orders or decisions issued by the authorized officer may be appealed in accordance with the provisions of part 4 of this title."

J. Steven Griles,

Assistant Secretary of the Interior.

December 20, 1985.

[FR Doc. 86–2070 Filed 1–29–86; 8:45 am]

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Federal Register

Thursday
January 30, 1986

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth; Final Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth program under section 311(c) of the Rehabilitation Act of 1973, as amended. This program provides grants to State and other public and nonprofit agencies and organizations for transitional rehabilitation service projects that provide job training for handicapped youths and prepare them for entry into the labor force, including competitive or supported employment.

These regulations include information about the kinds of projects supported under this program, the application requirements, and the selection criteria for evaluating applications.

EFFECTIVE DATE: These final regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3229, Washington, DC 20202, (202) 732-1299.

SUPPLEMENTARY INFORMATION: The Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth is authorized by section 311(c) of the Rehabilitation Act of 1973. Section 311(c) was added to the Act by the Rehabilitation Amendments of 1984, Pub. L. 98-221, enacted on February 22, 1984. This program supports special projects and demonstrations to provide job training for handicapped youths and prepare them for entry into the labor force. A summary of the regulations follows:

Part 369—Vocational Rehabilitation Service Projects

Part 369 is amended to include appropriate references to the new Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth under 34 CFR Part 376.

Part 376—Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Subpart A—General

Section 376.1 describes the purpose of the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.

Section 376.2 identifies the parties that are eligible to receive grants under this program.

Section 376.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 376.4 provides definitions of terms applicable to this program. Section 376.4(b) (1) and (2) sets out the same definitions of "handicapped youth" and "supported employment" that are included in final regulations for the Secondary Education and Transitional Services for Handicapped Youth Program under section 626 of the Education of the Handicapped Act published in the **Federal Register** on July 11, 1984 at 49 FR 28380.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Section 376.10 identifies various types of activities that may be supported under this program.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Section 376.30 authorizes the Secretary, for any fiscal year, to give priority to one or more areas of project activity. This provision is necessary to ensure that the Secretary can meet program needs as they change from year to year. The funding priorities for this program include the following: (1) Community-Based Transitional Rehabilitation Service Delivery; (2) Statewide Transitional Rehabilitation Service Delivery; (3) Transitional Rehabilitation Services for Handicapped Youth with Special Needs; (4) Transitional Rehabilitation Services for Institutionalized Persons; (5) Transitional Rehabilitation Services for Unemployed Handicapped Youth; and (6) Home Based Transitional Rehabilitation Services.

Section 376.31 contains the selection criteria that the Secretary will use to evaluate applications and award new grants under this program. The criteria reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Subpart E—What Conditions Must Be Met by a Grantee?

Section 376.40 establishes matching requirements for grantees.

Section 376.41 reflects a statutory requirement for cooperation between grantees and other agencies and organizations. Summary of Comments and Responses.

The following is a summary of public comments concerning the notice of proposed rulemaking for Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth published on July 12, 1985 (50 FR 28412) and the Secretary's responses to these comments. A total of five comments from a variety of public and private non-profit agencies were received on or before the closing date.

General

Comment. Two commenters pointed out that there was no reference in the proposed rulemaking to Section 311(c)(3) of the legislation which reads "The Commissioner shall assure that these projects shall be coordinated with other projects assisted under Section 626 of the Education of the Handicapped Act." The commenters recommended that appropriate reference be included in the final rules.

Response. No change has been made. The statutory requirement in Section 311(c)(3) is imposed on the Commissioner. The Commissioner intends to implement this requirement by coordinating the development of funding priorities, peer review of grant applications, scheduling of pre-award and other conferences with grant project directors and other similar activities under this section with those conducted under Section 626 of the Education of the Handicapped Act. A reference in the regulations is therefore unnecessary.

Section 376.10

Comment. Two commenters raised questions concerning the demonstration models described in this section. One questioned the appropriateness of existing models for use with blind persons. The other questioned the appropriateness of models which require continual grant funding for continuation.

Response. No change has been made. There is nothing in the regulations

which limits project activities to any particular demonstration model. The intent is to encourage applicants to prepare and demonstrate whatever model is appropriate to the applicant community and the population to be served. Section 376.10 merely describes project purposes and authorized activities.

Section 376.10(a)(2)

Comment. Two commenters noted that the list of agencies cited relative to cooperative efforts did not include reference to "organizations representing labor" and suggested that such a reference be included in the final regulations.

Response. A change has been made. The phrase "organizations representing labor" which is specifically mentioned in the legislation, has been added to the regulations in § 376.10(a)(2).

Section 376.30(f)

Comment. One commenter questioned the inclusion of the phrase "particularly those residing in rural areas" since home-based transitional rehabilitation services are also important to urban areas.

Response. A change has been made. Although home-based transitional services may represent a significant option for persons residing in rural areas, such services are also important in urban areas. Therefore, the word "particularly" has been deleted and the word "including" has been inserted.

Other Changes. Some additional technical and clarifying changes have been made in the regulations, but no substantive revision is intended.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the Notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 376

Vocational rehabilitation, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 369 and adding a new Part 376 as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

1. The authority citation for Part 369 continues to read as follows:

Authority: Secs. 12(c), 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 750, 775, 777a(a)(1), 777a(a)(3), 777(b), 777f, and 795g, unless otherwise noted.

2. In § 369.1, a new paragraph (b)(6) is added to read as follows and the current paragraphs (b)(6) and (b)(7) are redesignated as (b)(7) and (b)(8) respectively:

§ 369.1 What are the Vocational Rehabilitation Service Projects?

* * * * *

(b) * * *

(6) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth (34 CFR Part 376).

* * * * *

3. In § 369.2, a new paragraph (h) is added to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

* * * * *

(h) *Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

(4.) Section 369.3 is revised to read as follows:

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 369.

(c) The regulations in 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Sec. 12(c) of the Act; 29 U.S.C. 711(c))

5. In § 369.30, paragraph (a) is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria in § 369.31 and specific selection criteria in 34 CFR Part 371, 372, 373, 374, 375, 376, 378, and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in §§371.30, 372.30, 373.30, 374.30, 375.30, 376.31, 378.30, and 379.30. The number of points awarded under each criterion depends on how well the application meets all the elements under that criterion.

* * * * *

6. In § 369.32, the introductory paragraph is revised to read as follows:

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

* * * * *

7. A new Part 376 is added to read as follows:

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO HANDICAPPED YOUTH

Subpart A—General

Sec.

Authority: Sec. 311(c) of the Rehabilitation Act of 1973, Pub. L. 93-112, as added by sec. 136(c) of Pub. L. 98-221, 98 Stat. 26 (29 U.S.C. 777a(c)), unless otherwise noted.

Subpart A—General

§ 376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?

This program is designed to provide job training for handicapped youths to prepare them for entry into the labor force, including competitive or support employment.

(Sec. 311(c); 29 U.S.C. 777a(c))

§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c); 29 U.S.C. 777a(a))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 369.

(b) The regulations in this Part 376.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) "Handicapped youth" means any handicapped child who is between the ages of twelve and 26.

(2) "Supported employment" means paid work in a variety of settings, particularly regular work sites, especially designed for handicapped persons—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(3) "Transitional rehabilitation services" means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR Part 361 or the State plan for independent living services under 34 CFR Part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including worksite modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to handicapped youth to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for handicapped youth reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, facilities, parent groups, public or other nonprofit developmental disabilities agencies, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve handicapped youths.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a Notice published in the **Federal Register**, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for handicapped youth within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonstrate effective Statewide approaches to transitional rehabilitation service delivery for handicapped youth and demonstrate cooperative efforts between State agencies responsible for service to handicapped youth, including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for handicapped youth with special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed handicapped*

youth. This priority supports projects that demonstrate ways to train and place in competitive or supported employment handicapped youth who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which handicapped youth, including those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Sec. 311(c); 29 U.S.C. 777(a), (c))

§ 376.31 What selection criteria does the Secretary use under this program?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Impact* (20 points).

(1) The Secretary reviews each application to determine the probable impact of the proposed project on rehabilitation programs for handicapped youth.

(2) The Secretary considers—

(i) The contribution that the project findings will make to current rehabilitation practice; and

(ii) The extent to which findings and products can be used for the benefit of other groups of handicapped youth.

(g) *Innovativeness* (20 points).

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary considers—

(i) The approach to be used in the proposed project in providing transitional rehabilitation services is innovative and appropriate to the special needs of the groups of handicapped youth being served; and

(ii) The approach can be replicated in other service settings.

(h) *Likelihood of sustaining the program* (15 points).

(1) The Secretary reviews each application to determine the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary considers the extent to which—

(i) The applicant agency intends to continue to operate the service program after the termination of the project;

(ii) There is a sufficient base of service programs and work opportunities to ensure a lasting change in the way transitional rehabilitation services are provided to handicapped youths in the project area; and

(iii) Agencies in the project area with responsibilities which relate to the purpose of the project are actively collaborating in service delivery and project management.

(Sec. 311(c); 29 U.S.C. 777a(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. Where part of the costs is to be borne by a grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Sec. 311(c); 29 U.S.C. 777a(c))

[FR Doc. 86-2082 Filed 1-29-86; 8:45 am]

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Federal Register

Thursday
January 30, 1986

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons; Regional Centers for Deaf Individuals

AGENCY: Department of Education.

ACTION: Notice of Proposed Establishment of Geographic Regions.

SUMMARY: The Secretary proposes to establish geographic regions for Fiscal Year 1986 awards under the Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The Secretary intends to support the operation of four regional centers for deaf individuals, including models of comprehensive supportive services to those individuals.

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Comments should be addressed to: Dr. Joseph Rosenstein, Postsecondary Education Programs for Handicapped Persons, Division of Innovation and Development, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: Under section 625(a)(2) of Part C of the Education of the Handicapped Act, the Secretary gives priority consideration for four regional centers for deaf individuals, in addition to other activities supported under section 625 of the Act. Three years ago, the Department began making the four awards on a competitive, open basis.

In Fiscal year 1983, the Department published a notice which established two regions for the purpose of making the four awards under this program in that fiscal year. This notice proposes the same regional structure as the basis for making the four awards in Fiscal Year 1986.

Projects that operate regional centers for deaf individuals provide regional models of comprehensive supportive services to deaf students who desire postsecondary education and vocational technical training. Comprehensive supportive services for deaf students in postsecondary regional educational settings may include: interpreters, tutors, notetakers, counseling, placement, speech, and hearing services, special classes, vocational development, supervised housing, and opportunities for faculty and students to learn special techniques for communicating with the deaf students with whom they come into contact.

Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The program regulations at 34 CFR 338.10(a)(1) and 338.30(a) establish that the Secretary gives priority consideration to four regional centers for deaf individuals, including models of comprehensive supportive services to those individuals.

In accordance with the Education Department General Adminsitrative Regulations at 34 CFR 75.105(b)(2)(i), the Secretary proposes to issue these awards on the basis of geographical regions, as listed below. The making of awards on a regional basis is contemplated by the authorizing legislation and is consistent with program history. *See, also,* S. (conference) Rep. No. 1026, 93rd Cong., 2nd Sess. 194 (1974). Each application will be considered in competition with those of applicants from the same region. The Secretary proposes to make two awards per region, but will not make any award for a region for which he determines that no application is of sufficient quality to merit approval.

The regions are:

Western Region: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Marianas, Oklahoma, Oregon, South Dakota, Texas, Trust Territories of the Pacific Islands, Utah, Washington, and Wyoming.

Eastern Region: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Carolina, Rhode Island, Tennessee, Vermont, Virginia, Virgin Islands, West Virginia, and Wisconsin.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the composition of the geographical regions.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4084, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance Number 84.078; Postsecondary Education Programs for Handicapped Persons)

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–2084 Filed 1–29–85; 8:45 am]

BILLING CODE 4000–01–M

Postsecondary Education Programs for Handicapped Persons

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the Postsecondary Education Programs for Handicapped Persons: Projects for Centers Serving Deaf Individuals for Fiscal Year 1986.

Programmatic and Fiscal Information

The purpose of this notice is to invite applications for four new projects under the Postsecondary Education Programs for Handicapped Persons: Centers for Deaf Individuals authorized by Section 625 of the Education of the Handicapped Act. Under Section 625(a), the Secretary is authorized to make grants to State education agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies for the operation of four regional centers that include models of comprehensive supportive services to deaf students in postsecondary, vocational, technical, continuing, or adult education (20 U.S.C. 1424a).

The Secretary proposes to issue awards for four centers for deaf students according to the notice of proposed establishment of geographic regions published in this issue of the **Federal Register.**

It is estimated that approximately $2,000,000 will be available for support of the four centers to be awarded at an average of $500,000 for Fiscal Year 1986. Awards will be made for a 36-month period.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before March 17, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center,

Attention: CFDA No. 84.078, 400 Maryland Avenue, SW., Washington, DC 20202.

Each lat applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the postsecondary Education Programs for Handicapped Persons in 34 CFR Part 338. A Notice of Proposed Establishment of Geographic Regions is published in this issue of the **Federal Register.** Applicants should prepare their applications based on that notice. If there are any substantive changes made in the proposed geographic regions when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

Intergovernmental Review

This program is subject to the requirements of the Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, reigonal, and local entities must be mailed or hand delivered by May 16, 1986 to the following address:

The Secretary, U.S. Deparment of Education, Room 4181, CFDA No. 84.078, 400 Maryland Avenue, SW., Washington, DC 20202.

Please note that the above address is not the same address as the one to which the applicant submits its application. *Do not send applications to the above address.*

Application Forms

Application forms and program information packages are expected to be available by February 7, 1986. These may be obtained by writing to the Postsecondary Education Program for Handicapped Persons, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building Room 3511—M/S 2313) Washington, DC 20202.

Further Information: For further information contact Dr. Joseph Rosenstein, Postsecondary Education Programs for Handicapped Persons, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1176.

Program Authority: 20 U.S.C. 1424a

(Catalog of Federal Domestic Assistance No. 84.078 Postsecondary Education Programs for Handicapped Persons)

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–2083 Filed 1–29–86; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Thursday
January 30, 1986

Part V

Department of Health and Human Services

Social Security Administration

45 CFR Part 400

Refugee Resettlement Program; Final Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 400

Grants to States, Child Welfare Services, and Federal Funding for Assistance and Services for Refugees

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Final rule.

SUMMARY: This final regulation sets forth requirements governing quarterly grants to States for assistance and services under the Refugee Resettlement Program. The regulation includes requirements concerning general administration of State programs, submittal and approval of State plans, immigration status and identification of refugees, child welfare services (including services to unaccompanied minors), and Federal funding for a State's expenditures. This final rule implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980, Pub. L. 96–212, and amended by the Refugee Assistance Amendments of 1982, Pub. L. 97–363.

EFFECTIVE DATE: April 30, 1986.

ADDRESS: Office of Refugee Resettlement, Department of Health and Human Services, Switzer Building, Room 1229, 330 C Street SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Christie Cohagen (202) 245–1059.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1980, the Immigration and Nationality Act (the Act) was amended by the Refugee Act of 1980 (Pub. L. No. 96–212) to revise procedures for the admission of refugees and to establish a uniform base for the provisions of assistance to refugees. Section 311 of Pub. L. 96–212 added Chapter 2 to title IV of the Act to establish the Office of Refugee Resettlement (ORR) in HHS. The function of ORR is to fund and administer domestic refugee resettlement programs of the Federal Government.

Prior to enactment of the Refugee Act of 1980, which authorized the provision of assistance and services to refugees in the United States without regard to their national origin, assistance was provided through three separate programs for refugees:

1. The Cuban Refugee Program, which began in 1961 and was administered primarily by States, and for which a phasedown in funding was initiated in 1978.

2. The Indochinese Refugee Assistance Program (IRAP), which began in 1975 and was also primarily State administered.

3. A program of matching grants to national voluntary refugee resettlement agencies, which began in 1979, for assistance and services to Soviet and other non-Cuban, non-Indochinese refugees.

On August 29, 1980, ORR issued a program instruction (ORR–AT–80–6) to States on the effect of the Refugee Act on these programs. Policies which had applied to IRAP were extended to cover assistance and services to refugees in the United States regardless of national origin.

After a further phasedown, under section 313(c) of the 1980 Act, the Cuban Refugee Program was terminated at the end of fiscal year 1981.

On September 9, 1980 (45 FR 59318), ORR issued final regulations which set forth plan and reporting requirements that States must meet as a condition for receiving Federal funds for assistance to refugees under title IV of the Act. On March 12, 1982 (47 FR 10841), ORR issued interim final regulations revising cash and medical assistance policies for both the Refugee Resettlement Program (RRP) and the Cuban/Haitian Entrant Program (CHEP). A notice of proposed rulemaking on refugee placement policy was published on December 12, 1983 (48 FR 55300).

Discussion of Changes

The most significant change in the proposed rule was a consolidated, or per capita, grant to States which was designed to replace the separate grants for refugee cash assistance (RCA) and refugee medical assistance (RMA), social services, education assistance for refugee children, targeted assistance, and child welfare services (except services for unaccompanied minors). However, specific language in section 101(c) of the second continuing resoluton for fiscal year 1984 (Pub. L. 98–151) prohibited the Administration from spending funds to implement the proposed consolidated grant. That prohibition has remained in effect under Pub. L. 98–473 and Pub. L. 99–190, the continuing resolutions for FY year 1985 and FY 1986. Consistent with current law and congressional intent, we have deleted from this final regulation the proposed section 400.11(a) which would have provided for quarterly consolidated grants to States.

Because the section on the consolidated grant has been eliminated, the regulation now clarifies that current policy is continued under which States may claim Federal funding for RCA and RMA provided to eligible refugees during the 18-month period after the refugee entered the United States and for general assistance during the 18-month period beginning with the 19th month after the refugee entered the U.S.

The final regulation also makes clear that States shall submit a final financial status report for each fiscal year describing their actual expenditures within 90 days after the end of the fiscal year, not 30 days.

We have clarified that when States notify voluntary resettlement agencies regarding a refugee's use of cash assistance, they provide the refugee's current address and telephone number to the resettlement agency. We have also changed the title of § 400.27 to "Safeguarding *and sharing* of information" (inserting the words italicized here) in order to clarify that we are giving equal emphasis to the importance of the appropriate sharing of information between State agencies and voluntary resettlement agencies.

Finally, in response to comments about the difficulty of obtaining and reporting information on the nationality of recipients of medical assistance separately by each type of medical assistance program (Medicaid, general assistance, or refugee medical assistance), we have revised the regulation to eliminate the requirement.

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation for the most part ratifies practices already in place under the program and therefore would not be creating costs.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 505(b)), the Secretary certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule will indirectly affect small entities because some services funded under the RRP are provided by not-for-profit institutions under contract with the State. However, nothing in the rule imposes a significant burden on these small entities, and the rule, therefore, does not meet the threshold for regulatory flexibility analysis.

Sections 400.4, 400.5, 400.11(b) and (c), 400.28 (a) and (b), 400.118, and 400.120 of

this rule contain collection-of-information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) at the time of publication. OMB did not approve the reporting and recordkeeping contained in the proposed regulation at that time, noting comments about the difficulty of providing information on the nationality of recipients of medical assistance, provided separately for those receiving Medicaid, GA, and other assistance. We concur that such reporting would be burdensome. We do not currently require this kind of reporting nor do we intend to require it in the future. In the final rule, we have therefore deleted this wording from § 400.28(b).

Statutory Authority

Section 412(a)(9) of the Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

Under predecessor refugee programs, policy was transmitted to States in the form of action transmittals (ATs) from the Social and Rehabilitation Service and the Social Security Administration, HHS. Subsequent to the Refugee Act of 1980, some aspects of the RRP have been covered in regulations (as indicated in the previous section on "Background") while other aspects have continued to depend on ATs. This regulation represents a further step in codifying program policy in regulatory form.

This final regulation restates some current policies and modifies or augments others. In this preamble, we will discuss rules that incorporate current policy and explain policy changes contained in the regulation which were necessary as a result of the Refugee Act of 1980, the 1982 Amendments, or as a result of re-evaluation of the program and its goals.

To the extent possible, we have tied the Refugee Resettlement Program to the administrative and delivery systems of existing public assistance programs in the States, both to reduce the administrative burden on States and in an attempt to achieve equality between the assistance available to refugees and other needy individuals in the United States. However, the initial needs of refugees are different from those of needy Americans, and existing programs are not in all cases appropriate to meet these initial needs. Therefore, some policies differ from those of other assistance programs.

Subpart A—Introduction (Sections 400.1 and 400.2)

This subpart essentially repeats the rules that appear in subpart A of the current State plan regulation.

We have expanded the list of definitions in § 400.2 to include several abbreviations which we use in these rules as well as a few terms applicable to the Refugee Resettlement Program. Significant among these is the definition of "refugee" which incorporates the definition in section 101(a)(42) of the Act, so that all aliens whom the Immigration and Naturalization Service (INS) identifies as refugees are considered to be refugees for purposes of the Refugee Resettlement Program. We have deleted from this subpart the section specifying other HHS regulations that apply, which appears as § 400.3 in the current State plan regulation, and have substituted an asurance of compliance with Federal laws and regulations which appears in § 400.5.

We have also revised the definition of "State agency" by adding "or agencies" to make clear that, in the absence of a Federal statutory requirement for a single State agency, a Governor may designate more than one agency to plan and carry out different aspects of the RRP.

The definition of "refugee medical assistance" which was contained in the proposed rule erroneously referred to two sections which were not included in the proposal; it has been corrected by substituting a reference to Action Transmittal SRS–AT–75–27. The definition represents no change from current policy.

Subpart B—Grants to States for Refugee Resettlement

A. The State Plan (Sections 400.4 through 400.9)

This portion of the regulation retains much of the substance of the current State plan regulation but makes some changes to minimize the burden of the State and allow State flexibility.

We have revised § 400.4, which describes the purpose of the plan. We published the existing regulation before the States' October 1, 1980, deadline to submit their plan (see section 313(d) of Pub. L. 96–212). Now that participating States have filed plans, § 400.4 provides that, once approved, a plan will remain in effect until either (1) a State amends or revokes its plan or (2) ORR notifies the State, in accordance with § 400.8, that the plan no longer complies with the statute or applicable regulations. Thus States do not have to file a new State plan each fiscal year. However, because of the additional State plan requirements contained in this regulation, a State may have to amend its plan when this regulation becomes final.

We revised § 400.5, which describes the content of the plan, to delete the requirement that the plan specify the composition of the State advisory council required under § 400.9 of the previous regulation. In the interest of minimizing the burden on States, especially those with small refugee populations, we will no longer require States to establish a State advisory council. However, a State may establish a council and charge the reasonable and necessary administrative expenses of such a council against its ORR grants.

We also have clarified some aspects of the plan content by requiring States to include descriptions of various aspects of the program.

Finally, we have added a requirement that a State will assure that meetings are held between local representatives of voluntary refugee resettlement agencies and representatives of State and local governments to plan and coordinate refugee placement, unless the Director exempts the State from this requirement. This provision reflects a requirement added by the Refugee Assistance Amendments of 1982 that the Director of ORR provide for a mechanism to accomplish such meetings.

We have changed section 400.7, Submittal of the State plan and plan amendments for Governor's review, by adding that the Governor, or his or her desginee, must sign a plan or plan amendment.

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects. Section 400.8 is a new provision that describes the method by which ORR will approve State plans and plan amendments. The procedure follows that used in the AFDC program (see 45 CFR Part 201—Subpart A). The State must submit a plan or plan amendment to the Director of ORR, or his or her designee, who must approve or disapprove the plan within 45 days and promptly notify the State of such action. As approved State plan or plan amendment cannot be effective before the first day of the calendar quarter in which the State submits it, unless otherwise approved by the Director.

The new § 400.9 sets out the process for initial administrative review of ORR decisions on approval of State plans or plan amendments. A State dissatisfied with an ORR determination may petition

the Director of ORR within 60 days after it receives notification of the decision. The State may, but is not required to, request that a hearing be held. If a hearing is requested, the Director, or his or her designee, will then notify the State of the time and location within 30 days after receiving the petition. The hearing will be scheduled not less than 30 days nor more than 60 days from the date the State receives the notice of hearing. The hearing follows the AFDC procedures in 45 CFR Part 213. The Director will affirm, modify, or reverse the original decision within 60 days of receipt of the State's petition, or if a hearing is held, within 60 days after the conclusion of the hearing.

B. Award of Grants to States (Section 400.11 and 400.12)

Section 400.11 is a new provision explaining the method by which ORR makes grant awards to States with approved State plans.

Language describing a new consolidated grant to States, which was contained in § 400.11(a) of the proposed rule, has been deleted, as explained previously, and the other paragraphs have been redesignated.

Under § 400.11(a), ORR will, subject to the availability of funds, provide quarterly grants to States for assistance and services for unaccompanied minors; for the State cost of assistance provided to refugees, during their first 36 months in the U.S., under the programs of AFDC, SSI, adult assistance in the territories (i.e., aid to the aged, blind, and disabled, aid to the blind, aid to the permanently and totally disabled, and old-age assistance), and Medicaid; for the costs of refugee cash assistance (RCA) and refugee medical assistance (RMA) provided during a refugee's first 18 months in the U.S.; and for the cost of cash or medical assistance provided under a State or local general assistance (GA) program of general applicability during a refugee's second 18 months of residence in the United States.

Section 400.11(b) (1) and (2) represents current ORR policy on State submittals of requests for reimbursement. States must submit yearly estimates of reimbursable costs for the fiscal year 45 days prior to the beginning of that fiscal year, and adjustments to any quarterly estimate 30 days prior to the beginning of that quarter. Under § 400.11(c), States must submit a financial status report describing their actual expenditures within 30 days of the close of the quarter, except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year. These reports are described in departmental grants administration rules at 45 CFR 74.73(a).

After ORR reviews a State's submittals, it will compute the grant award and transmit the notification of award to the State.

Section 400.12 provides States an opportunity to informally appeal adverse determinations in post-award disputes. Departmental grant appeals policies mandate an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Grants Appeals Board will be allowed (see 45 CFR 16.3(c)). The preliminary appeal process established in § 400.12 for the Refugee Resettlement Program is modeled on, but not identical to, that used by the Public Health Service (see 42 CFR Part 50, Subpart D, Public Health Service Grant Appeals Procedure, § 50.401 et seq.). If the informal appeal results in an adverse determination, the State may appeal to the Departmental Grant Appeals Board under Part 16 of Title 45.

Subpart C—General Administration

This subpart contains several administrative rules, most of which appeared in the previous State plan regulation at 45 CFR Part 400. Section 400.27 regulates the safeguarding and sharing of information, currently set forth in § 400.11 of the State plan regulation.

The subpart also contains some new provisions and additions to the existing regulation.

Section 400.22 requires the State agency to maintain oversight responsibility for the program.

Section 400.23(a) requires States to provide hearings utilizing the same procedures and standards as those used for the AFDC program and set forth in 45 CFR 205.10(a).

At the same time, we have made clear in § 400.23(b) that if the date of entry of a refugee is at issue, this is a matter for prompt factual determination based on documentation, and not a subject for a hearing. Again, we have based this on policies applicable to the AFDC program.

Section 400.25 prohibits States from imposing durational residency requirements on applicants for assistance and services. This prohibition is based on those in the AFDC and Medicaid programs.

Section 400.27(b) is intended to assure that a State provides information on cash assistance utilization, essential to a voluntary agency's carrying out its responsibilities, to the voluntary resettlement agency that arranged for the resettlement of a given refugee.

Section 400.28 incorporates the maintenance of records and reporting requirements that appear at § 400.10 of the current State plan regulation.

We have developed forms for reporting statistical and program information under § 400.28(b) determined necessary to fulfill our responsibilities under the Act. These forms, which have been approved by OMB, are currently in use.

We have eliminated the requirement for submittal of annual financial and performance reports (section 400.11(c) and (d) of the previous regulation) because quarterly financial and performance reports are now required under §§ 400.11(c) and 400.28(b) of this regulation.

Subpart D—Immigration Status and Identification of Refugees

In order to assure that all refugees are eligible to apply for benefits, the new § 400.43 includes forms of documentation that INS gave individuals both before and after enactment of the 1980 Act.

Section 400.43(b) provides that the Director will issue instructions specifying the documentation that applicants for assistance or services must submit. This formulation allows the Director maximum flexibility to respond quickly to any changes INS might make in the forms of documentation it provides refugees.

Subparts E–G—(Reserved)

Subpart H—Child Welfare Services

This subpart sets forth the requirements concerning grants to States for child welfare services to refugee unaccompanied minors under section 412(d)(2)(B) of the Act.

We have inserted in this subpart § 400.112, which reflects current policy on child welfare services for children other than unaccompanied minors, and § 400.113(a), which reflects the statutory limitation on RRP funding for such services for such children. These provisions were omitted from the proposed regulation because child welfare services for these minors were then being proposed for inclusion within the consolidated grant to States.

A. Definition of Unaccompanied Minor (Sections 400.111 and 400.113)

The definition in this regulation is a change from current policy. It is intended to clarify which refugee children, under what circumstances, may be considered to be unaccompanied minors. The definition reflects the intent of the legislative history of the 1980 Act which makes

clear that "unaccompanied" means refugee children who "enter the United States unaccompanied by their parents or other adult guardians" (H. Report No. 96-608, p. 27). The definition also provides that an unaccompanied minor is one who is not "destined to" a parent, a close adult relative willing and able to care for the child, or any other adult having legal custody since such a child might actually enter the U.S. unaccompanied but his entry would be for the purpose of family reunification.

The definition also requires that the child must have been identified as "unaccompanied" by the Immigration and Naturalization Service but would permit the Director of ORR to determine on the basis of information provided by a State that a particular child should have been, but was not, classified as unaccompanied. This provision will enable States to identify specifically those children whom they may consider unaccompanied. Finally, the definition permits a State to continue to consider as unaccompanied any minors who were properly so classified under Action Transmittal SSA-AT-79-04 prior to the effective date of this regulation.

Section 400.113 is intended to clarify specifically the circumstances under which a child's status as "unaccompanied" is terminated—by age, by reunification with parent(s), or by being united with a non-parental adult who is granted legal custody or guardianship under State law.

B. Legal Responsibility for Unaccompanied Minors (Section 400.115)

This section requires a State to initiate procedures for establishing legal responsibility for an unaccompanied minor within 30 days after the minor arrives at the resettlement location. Current policy does not mandate a specific deadline.

Paragraph (c) of this section clarifies that, in certain rare cases, adoption of unaccompanied minors may be permitted under State law. In general, such minors are not eligible for adoption since they are only temporarily separated from their parents or close adult relatives and since family reunification is the objective of the program.

C. Services to Unaccompanied Minors (Sections 400.116 through 400.120)

A State must provide an unaccompanied minor with the same range of child welfare benefits and services available in foster care cases to other children in the State and may provide additional services if the Director approves, in writing, the provision of such services. A State may provide services directly or through arrangements with licensed public or private child welfare agencies in the State.

(a) *Case planning (Section 400.118).* The State, or the agency with which it has made an arrangement to provide services, must develop, implement, and review an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor. Special attention must be given in the plan to family reunification, orientation of the minor to American culture, preservation of ethnic and religious heritage, appropriate placement, health screening and treatment, and preparation for independent living.

We have added to section 400.18(b) that the case plan must address preservation of a child's ethnic and religious heritage. This is included in current policy and was referred to in the preamble to the proposed regulation but accidentally omitted from the text.

(b) *Interstate movement (Section 400.119).* A State must use the same procedures that govern the movement of nonrefugee foster care cases to other States when an unaccompanied minor, after initial placement in the State, is resettled in another State.

(c) *Reporting requirements (Section 400.120).* The regulation contains requirements for State reports required by sections 412(d)(2)(B)(iv) and 413(a)(2)(G) of the Act. A State must submit the reports required by the regulation. Two reporting forms for State use to meet these replacements have been approved by OMB.

Subpart J—Federal Funding (FF)

Subpart J regulates Federal funding under the RRP and represents no change from current policy. Language in the proposed rule regarding consolidated grants to States has been deleted.

Quarterly grants to States, subject to the availability of funds, provide reimbursement for: The State share of AFDC costs, Medicaid costs, and adult assistance costs in the territories, including administrative costs, during a refugee's first 36 months; State supplementary payment to refugee SSI recipients during that period; the cost of RCA and RMA during a refugee's first 18 months in the U.S.; the cost of cash or medical assistance provided under a State or local GA program during the second 18 months; and the cost of assistance and services to refugee unaccompanied minors.

Funding is available for assistance and services provided to unaccompanied minors under §§ 400.115 through 400.120, including the cost of establishing legal responsibility for a minor, until the refugee's status as an unaccompanied minor terminates.

Subpart K—Waivers

Current regulations do not contain a provision for waivers. Subpart K permits a waiver by the Director if a State demonstrates to the Director's satisfaction that it cannot reasonably comply with a requirement of the regulations. We believe that such a provision is necessary in recognition of the wide variations from State to State in legislative and administrative requirements and programmatic circumstances. This allows a degree of flexibility for specific exceptions when the Director determines that a particular exception in a given State would advance the purposes of the refugee program and the intent of the Act. No waiver could be considered when a requirement of the regulations reflects a specific statutory requirement.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Discussion of Comments

We received 82 letters from State and local government agencies, national and local voluntary resettlement agencies, service providers, coalitions and forums concerned with refugee resettlement, and refugee mutual assistance associations.

The following sections address specific points which commenters raised:

Single State Agency

Comment: A few commenters felt that the elimination of the single State agency requirement would further decentralize and fragment the program.

Response: It is our opinion that HHS does not have the statutory authority to require a State to use a single State agency as a condition of participation in the refugee resettlement program. States, however, may exercise the option of using a single State agency to administer the program, and ORR recommends that States choose to do so in the interest of efficient program management.

Advisory Council

Comment: Some commenters opposed the proposed elimination of the requirement that States establish a State Advisory Council. They suggested that because the councils could serve a valuable purpose in the refugee

program, their existence should not be a matter of State discretion but a continuing Federal requirement.

Response: We do not believe that the existence of the State Advisory Council should be mandated by the Office of Refugee Resettlement for the reasons stated previously in the preamble. The elimination of the requirement is intended to reduce the burden on States with small refugee programs. However, all States have the option, under the regulation, of retaining the State Advisory Councils and may continue to claim reasonable and necessary administrative expenses associated with the Councils.

Quarterly Meetings

Comment: ORR received several comments which stated that quarterly meetings on refugee placement might be excessive and even unnecessary given the decreased numbers of new refugee arrivals. Some commenters also suggested that the holding of quarterly meetings, together with other aspects of implementing placement policy, be a Federal responsibility.

Response: The Refugee Assistance Amendments of 1982 (Pub. L. 97–363) require that quarterly meetings on refugee placement be held between State and local government representatives and representatives of local affiliates of voluntary agencies. Action Transmittal ORR–AT–83–5 implements this requirement. The Action Transmittal (AT) also provides authority, as does this regulation, for the Director of ORR to waive the quarterly meeting requirement if the State does not consider the meetings necessary due to the absence of problems associated with the planning and coordination of refugee placement. We believe that the waiver authority, which has already been used under the AT, provides the flexibility needed to avoid unnecessary meetings. We do not concur with the recommendation that the Federal Government be responsible for convening the quarterly meetings between State and local public and voluntary agency representatives because of ORR's limited staff resources. ORR will, however, continue to participate in such consultations to the extent that the availability of staff permits, and ORR expects to continue to sponsor certain consultations.

State Plans

Comments: One commenter expressed opposition to the requirement that a State be responsible for coordinating public and private resources when States do not have the authority to sanction voluntary agencies.

Response: This provision is required by section 412(a)(6)(A)(iii) of the Immigration and Nationality Act and was reflected in previous ORR regulations at 45 CFR 400.5(d).

Comment: One commenter asked that the regulation include a clear description of the required contents of the State plan and recommended that the ORR Director be required to notify a State in writing of all actions taken by ORR or HHS regarding State plans.

Response: ORR does not include detailed guidelines for the preparation of State plans in the regulation because of the burden this would impose on States. It will continue to be ORR practice to communicate in writing any actions it takes regarding State plans or plan amendments.

Comment: One commenter stated that it was onerous to require that the State plan provide for and describe: (1) Procedures established to identify refugees who at the time of resettlement in the State are determined to have medical conditions requiring observation or treatment, and (2) procedures established to monitor any necessary treatment or observations. The commenter indicated that this responsibility should lie with the voluntary agencies and with the Public Health Service.

Response: The regulation reflects the requirement of section 412(a)(6)(A)(v) of the Immigration and Nationality Act that a State submit a plan which provides for "the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary." We believe State responsibility in this area to be consonant with the overall State role in coordinating the refugee program.

Comment: Three commenters noted the difficulties of providing information on the number of refugees identified as having medical problems on arrival in the State and the kinds of services, assistance, and followup provided to them. Another commenter suggested that the benefits from having this information would outweigh the cost involved in obtaining it.

Response: ORR currently requires the States to provide this information on the quarterly performance report (Form ORR–6 as approved by OMB under No. 0960–0317). We believe that the State's oversight role in this area, which has a clear statutory basis in section 412(a)(6) of the Act, is essential even though much of the actual activity involves the Public Health Service and local voluntary agencies. Reporting by the States on the services and assistance provided is necessary, reasonable, and consistent with the existing legislation.

Comment: One commenter objected to the requirement that State plans and amendments be approved by ORR, stating that if ORR were to withhold funds as a result of disapproval, some States would not be able to operate the refugee program.

Response: ORR approves State plans and amendments to the plan to be sure that they conform with Federal statutes and regulations. The purpose of the review is not to withhold Federal funds but to work with a State to develop acceptable plans and subsequent amendments.

Definitions of Cash and Medical Assistance

Comment: One commenter requested that the regulation clarify whether refugee cash assistance (RCA) and refugee medical assistance (RMA) are to be included under the definitions of "cash assistance" and "medical assistance."

Response: We have added language in § 400.2 making clear that RCA and RMA are included under these definitions.

Consolidated Grant

Comment: The majority of commenters expressed opposition to the section of the proposed regulation regarding the consolidated grant program.

Response: This proposal has been deleted in response to language in section 101(k) of the continuing resolution for FY 1985 (Pub. L. 98–473) which prohibits spending funds to implement a consolidated grant.

Reporting and Recordkeeping Requirements

Comment: Two commenters noted the difficulty in providing quarterly program and financial reports 30 days after the end of each quarter. Both noted internal State procedures or organization (e.g., a county-administered system) that precluded the completing of reports within 30 days.

Response: The submission of quarterly performance and financial reports within 30 days after the end of the quarter is standard practice in Departmental grants administration. ORR has allowed extensions of at least 30 days when demonstrably necessary and has also used a waiver procedure as a longer term solution. Such a waiver procedure is included in this regulation at § 400.300. We believe such provisions are sufficient for the resolution of the

kind of problems noted by the commenters, and are preferable to an overall change in established grants administration practices.

Comment: One commenter noted that proposed § 400.11(d) implied that the final financial report for the fiscal year is due 30 days after the end of the fourth quarter, whereas the final report should be due 90 days after the end of that quarter.

Response: The commenter is correct. The following phrase has been added in this regulation to the section now redesignated 400.11(c): "except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year."

Comment: Two commenters suggested that ORR consider the use of sampling for collecting data to determine the effectiveness of the program. Both commenters indicated that efforts to track all refugees within their State through different programs such as cash assistance and service provision would be extremely difficult.

Response: The reporting and recordkeeping requirements at Section 400.28 do not in themselves require the tracking of refugees through different programs. We therefore do not believe any change in the wording of the regulation is necessary.

Comment: Several commenters raised objections to reporting and recordkeeping requirements in the NPRM which they felt were excessive, impractical, or beyond what is currently required under the refugee resettlement program. One commenter noted that the regulation increases requirements in several areas (notably assistance by nationality) and suggested sampling and more discretion to States in producing the desired data. One commenter feared that additional data development would not be reimbursable. One objected to the overall requirement of providing data on assistance by nationality for those refugees receiving assistance under categorical programs. Finally, one commenter suggested that the requirement to count separately refugees who are secondary migrants was too burdensome.

Response: This regulation is not intended to expand the recordkeeping and reporting requirements for the refugee program, or to exceed what is required by law or contained in existing regulations. In order to clarify this, we have removed the detailed listing of types of data which appeared in the proposed regulation at 400.28(b)(2); this makes clear that we are leaving in place the currently approved reporting requirements. Costs incurred by grantees in obtaining, maintaining, and reporting these data are allowable and reimbursable administrative costs. States already are required to provide data on assistance by nationality and on secondary migrants by the Refugee Assistance Amendments of 1982. ORR understands that the gathering and/or maintenance of some of the required data might be difficult and has traditionally provided for sampling when necessary and reasonable. However, grantee deviation from normal reporting requires prior approval by ORR. We do not believe that a blanket prior approval of undefined grantee flexibility would constitute responsible Federal management of this program.

Safeguarding of Information

Comment: One commenter suggested that the provision be broadened to include the refugee's current address and telephone number and any information necessary to make training referrals.

Response: ORR is aware of the importance of sharing information between a State and a refugee's sponsoring resettlement agency as to the refugee's current location. The relevant section has been revised specifically to recognize this.

Durational Residency Requirements

Comment: One commenter believed that the section prohibiting States from imposing durational residency requirements on applicants for assistance or services would contravene the spirit of the consolidated grant, which would give more flexibility to States and localities. Another commenter expressed concern that the requirement would not only establish a prohibition on minimum residency but also prevent a State from establishing maximum residency requirements for delivery of services.

Response: The Department has deleted the proposed consolidated grant. The regulation does specify that a State may not impose a requirement concerning duration of residence in order for an individual to participate in the State's program for the provision of assistance or services. This provision is intended to avoid a potential arbitrary impediment to needy refugees' receiving necessary assistance or services and is consistent with similar prohibitions found in the AFDC and Medicaid programs. This requirement does not affect a State's prerogative to designate priority categories for services to refugees which take length of U.S. residency into account.

Hearings

Comment: A few commenters recommended that the provision requiring States to allow for hearings for refugee applicants for, or recipients of, assistance, which uses the same procedures and standards as those for the AFDC program, should not be applicable to general assistance (GA) programs in the State.

Response: The requirement in this regulation relating to hearings applies only to the specific refugee programs of RCA, RMA, and refugee support services. It does not affect other programs for which refugees may qualify, such as GA programs.

Comment: One commenter objected to § 400.23(b) of the regulation which provides that if a refugee's date of entry is at question, the matter is to be resolved through prompt factual determination based on documentation issued by the Immigration and Naturalization Service. The commenter expressed his opinion that ORR should allow the individual the opportunity to contest a date as furnished by INS, otherwise, he suggested, ORR would be denying that individual due process.

Response: The authority and responsibility for determining dates of entry, as well as other matters related to immigration status, rest with the Immigration and Naturalization Service rather than with ORR or with a State or local welfare agency. Therefore a refugee must seek correction of any documentation errors through INS.

Definition of Unaccompanied Minor

Comment: A few commenters commented that the definition of a refugee unaccompanied minor should require a child to meet the definition of a refugee.

Response: Subpart D, on immigration status and refugee documentation, applies to all aspects of the refugee program, including unaccompanied minors.

Comment: Two commenters suggested that the term "close adult relative" be defined in the same manner as the caretaker relative in the AFDC program.

Response: We believe that the AFDC definition of caretaker relative (see section 406(a) of the Social Security Act) is too restrictive for this special and unique population of minors, frequently with extended family ties, for whom greater flexibility is needed. By using the statutory term "close adult relative" (section 412(d)(2)(B)(i) of the Immigration and Nationality Act), we allow more discretion in placing the

minor with an appropriate nonparental family member.

Comment: With respect to the question of a child who, it is believed, was not, but should have been, classified as an unaccompanied minor by INS, some commenters recommended that the ORR Regional Director or his/her designee be authorized to change the classification of the child and that a request for such reclassification be determined within prescribed timelines—e.g., within 30 days.

Response: ORR does not plan to delegate this authority since the potential number and complexity of such requests is not known. At this time we are not able to estimate a time-frame for determinations since such decisions may require ORR consultation with INS. However, we will make every attempt to respond promptly to requests for reclassification. A State should make any request for reclassification to unaccompanied minor status to the ORR Regional Director.

Comment: One commenter asked whether the effective date of the provision dealing with the reclassification of children as unaccompanied minors applied retroactively or prospectively, and another commenter recommended that it apply retroactively with retroactive Federal reimbursement. A third commenter recommended that it be implemented retroactively in order to support the interpretation given verbally by ORR since the issuance of SSA–AT–79–04.

Response: This rule applies prospectively since previous determinations were made in accordance with Action Transmittal SSA–AT–79–04. We believe that the third commenter's concern is addressed by the provision in section 400.111 that permits the continuation of unaccompanied minor status for "a child who was correctly classified as 'unaccompanied' by a State in accordance with Action Transmittal SSA–AT–79–04 (and official interpretations thereof by the Director)."

Comment: A commenter asked whether a child who is institutionalized but who also has natural parents in the United States would be considered an unaccompanied minor.

Response: Such a child would not be considered an unaccompanied minor.

Comment: One commenter believed that the definition of an unaccompanied minor would be in conflict with State law, possibly jeopardizing the care of certain refugee minors, and recommended amending the definition to read: ". . . entered the country neither unaccompanied by nor destined to (a) parent, or (b) other legally responsible relative under the statutes of the State of residency, or (c) any adult with a clear and court-verified claim to custody of the child." The commenter agreed with the placement of children with extended family members but at the same time felt that the Federal Government should provide financial support to these families just as the State should monitor the cases.

Response: We believe that the definition of unaccompanied minor contained in this regulation correctly reflects the language, intent, and legislative history of section 412(d)(2)(B) of the Federal statute. The statute authorizes child welfare services under section 412(d)(2)(A) and thus recognizes that children other than those who meet the definition of unaccompanied minor may require protective services.

Comment: It was suggested by one commenter that ORR use the same definition for both refugee unaccompanied minors and Cuban/Haitian entrant unaccompanied minors.

Response: We decided not to change the final rule because the Cuban/Haitian entrant unaccompanied minor classification was a one-time classification for such children. Currently, there are very few entrant minors in the Cuban/Haitian entrant unaccompanied minors program, and most of these minors are nearing the age of emancipation in their respective States of placement.

Comment: According to one commenter, § 400.111 does not specifically state who has the authority to determine whether a nonparental adult relative is willing and able to care for a minor. Such a determination, the commenter suggested, should be under the jurisdiction of the State court.

Response: The language in §§ 400.111 and 400.113 is constructed to provide that the determination of "the willing and able" status of a nonparental adult relative be decided in a State court.

Benefits for Unaccompanied Minors

Comment: A commenter suggested that we add the word "benefits," to § 400.113, entitled "Duration of eligiblity," which states: "An unaccompanied minor continues to meet the definition of unaccompanied minor and is eligible for services under §§ 400.115 through 400.120. . . ." The commenter felt that this addition would provide clarity to the statement.

Response: We agree. This change has been made in the final rule.

Legal Responsibility

Comment: Two commenters questioned the reasonableness of the requirement that States initiate legal responsibility procedures within 30 days after an unaccompanied minor arrives at the location of resettlement, citing the steps required before such procedures can be initiated. A third commenter stated that the requirement would not be unreasonable if the 30-day period were counted from the date that the sponsoring voluntary agency notifies the State that a minor is ready for transfer to the State or county agency.

Response: Because of the importance of establishing legal responsibility, ORR believes that it is appropriate to retain the 30-day requirement and to address the exceptional circumstances, as necessary, through the waiver provision of § 400.300.

Adoption

Comment: A commenter recommended that the final rule clearly state that termination of parental rights be determined pursuant to State law. Further, the commenter said that the use of the language "clear expression" of the termination of parental rights, suggests a new standard which may be at variance with existing State statutes. Another commenter stated that the issue of adoption of State wards is strictly a State court responsibility, and therefore it is unclear whether the Federal Government has the ability to allow, or limit, adoption.

Response: We determined that the use of the term "clear expression" could be confusing and have deleted it. With reference to the second issue, we acknowledge that the adoption of State wards is a State court responsiblity. In discussing adoption, § 400.115(c) clearly states "pursuant to adoption laws in the State of resettlement." However, we believe that it is essential to emphasize that most of these children are temporarily separated from their natural parents and/or close adult relatives; consequently, unaccompanied minors are not generally eligible for adoption. Family reunification is the goal of the unaccompanied minors program.

Comment: A few commenters asked whether an unaccompanied minor would retain the status of "unaccompanied minor" if an adoption had been petitioned but not finalized.

Response: Yes, the minor would remain in unaccompanied status until the adoption was finalized (unless unaccompanied minor status otherwise terminated under § 400.113).

Services for Unaccompanied Minors

Comment: Concrete goals for assisting unaccompanied minors in becoming self-supporting at the time of

emancipation should be defined, according to one commenter. Issues such as cultural preservation and the use of ethnic-specific services should be addressed also.

Response: We believe that § 400.118, entitled "Case planning," adequately responds to the commenter's concerns.

Reporting on Unaccompanied Minors

Comment: Three commenters objected to aspects of the reporting requirements on unaccompanied minors. One suggested that States be allowed to provide reports on minors by using their own existing State forms; one noted the difficulty in providing information on changes in a minor's status within 30 days; and one noted the problem of providing information on particular assistance provided (e.g., assistance under the AFDC and RCA programs).

Response: We do not believe that it is advisable to allow States to provide information on minors on forms of their own choosing. ORR currently has two forms that have OMB approval for reporting the status and progress of these minors, and these forms are currently in use. States and other members of the public have had opportunities to comment on the specific nature and structure of these forms during the course of the normal reports clearance process as laid out in the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and 5 CFR Part 1320. They will have similar opportunities periodically in the future. ORR, however, acknowledges that 30 days may be too short a time within which to report any change in a minor's status; this time period has therefore been changed to 60 days. Finally, the information on minors to which the one commenter objected has been required since the fall of 1982 on ORR's quarterly performance report (Form ORR-6 as approved by OMB under No. 0960-0317). These reporting and time-frame requirements, by and large, correspond to State child welfare requirements. We attempted to make the information-updating requirements a simple checklist approach, thereby facilitating State reports and eliminating any duplicative reporting.

The Department must require additional information on these special children in order to meet our statutory data-gathering and reporting requirements. Therefore, we are not in a position to make exceptions to this regulation.

Federal Funding for Unaccompanied Minors

Comment: A few Commenters recommended that the final rule specify the availability of Federal funding to cover placement costs of unaccompanied minors, pending the establishment of legal responsibility for the minors in the State of placement.

Response: The regulation addresses this issue in § 400.205. ORR currently reimburses States for such costs and will continue to do so under this regulation.

Comment: Two commenters inquired whether Federal funding (FF) would be available if a child is eligible for assistance under a State adoption assistance program.

Response: FF would not be available to provide reimbursement to States for State adoption assistance for unaccompanied minors. However, FF would continue to be available to States during the pre-adoption period (assuming unaccompanied minor status did not otherwise terminate under section 400.113), which is generally 6–12 months from the filing of the adoption petition in the appropriate State court to the legal finalization of that adoption.

Time Limit on Filing State Claims

Comment: A few commenters opposed the provision in the proposed regulation which stipulated that State claims for expenditures for assistance and services be filed no later than 1 year after the end of the Federal fiscal year in which the expenditure was made. One commenter recommended that the requirement be removed in order to allow for an open-ended claims filing system similar to that used in the AFDC program. Another recommended that claims be open-ended for at least 36 months. A third simply objected to the 1-year limitation, stating that it was inadequate because State regulations allowed State contractors 2 years for billing

Response: We have revised this section to correspond to current policy which allows (a) 1 year after the year in which a grant is awarded for the filing of a final expenditure report with respect to grants for cash assistance, medical assistance, and related administrative costs, and (b) 2 years with respect to grants for social (support) services.

45 CFR Part 400 is amended as follows:

1. The Table of Contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Authority: (Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9))

2. Sections 400.1 and 400.2 of Subpart A are revised to read as follows:

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in sec. 412(a)(6)(B) of the Immigration and Nationality Act, the Director has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"AABD" means aid to the aged, blind, and disabled under title XVI of the Social Security Act.

"AB" means aid to the blind under title X of the Social Security Act.

"Act" means the Immigration and Nationality Act.

"AFDC" means aid to families with dependent children under title IV–A of the Social Security Act.

"APTD" means aid to the permanently and totally disabled under title XIV of the Social Security Act.

"Cash assistance" means financial assistance to refugees, including AFDC, SSI, refugee cash assistance, and general assistance, as defined herein, under title IV of the Act.

"Director" means the Director, Office of Refugee Resettlement.

"Federal Funding" or "FF" means Federal funding for a State's expenditures under the refugee resettlement program.

"General assistance program" means a financial and/or medical assistance program existing in a State or local jurisdiction which: (a) Is funded entirely by State and/or local funds; (b) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements; and (c) consists of one-time emergency, or ongoing assistance intended to meet basic needs of recipients, such as food, clothing, shelter, medical care, or other essentials of living.

"HHS" means the Department of Health and Human Services.

"Medical assistance" means medical services to refugees, including Medicaid, refugee medical assistance, and general assistance, as defined herein, under title IV of the Act.

"OAA" means old age assistance under title I of the Social Security Act.

"ORR" means the Office of Refugee Resettlement.

"Plan" means a written description of the State's refugee resettlement program and a commitment by the State to administer or supervise the administration of the program in accordance with Federal requirements in this part.

"Refugee" means an individual who meets the definitions of a refugee under section 101(a)(42) of the Act.

"Refugee cash assistance" ("RCA") means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for AFDC, OAA, AB, APTD, AABD, or SSI and who have resided in the United States for less than an 18-month period from their initial entry into the country.

"Refugee medical assistance" ("RMA") means: (a) Medical assistance provided under section 412(e) of the Act to refugees who are ineligible for the Medicaid program and who have resided in the United States for less than an 18-month period from their initial entry into the country; and (b) services provided in accordance with the final paragraph of the section "Medical Assistance" of Action Transmittal SRS–AT–75–27 (June 9, 1975).

"Secretary" means the Secretary of HHS.

"Sponsor" means an individual, church, civic organization, State or local government, or other group or organization which has agreed to help in the reception and initial placement of refugees in the United States.

"SSI" means supplemental security income under title XVI of the Social Security Act.

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territories of the Pacific.

"State agency" means the agency (or agencies) designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan and includes any local agencies administering the plan under supervision of the State agency.

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and who is authorized to, ensure coordination of public and private resources in refugee resettlement.

"Support services" means services provided or contracted for by a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Act.

"Title IV of the Act" means title IV, Chapter 2, of the Immigration and Nationality Act.

"Voluntary resettlement agency" or "voluntary agency" or "resettlement agency" means one of the national resettlement agencies (or its local affiliate or subcontractor) or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

3. Section 400.3 is removed and reserved.

§ 400.3 [Reserved]

4. The title of Subpart B is revised, an undesignated center heading is added, and § 400.4 is revised to read as follows:

Subpart B—Grants to States for Refugee Resettlement

The State Plan

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from funds appropriated under sec. 414 of the Act, it must submit to ORR a plan that meets the requirements of title IV of the Act and of this part and that is approved under section 400.8 of this part.

(b) An approved plan continues in effect until the State expressly amends or revokes the plan or ORR notifies the State in accordance with section 400.8 of this part that the plan no longer meets the requirements of title IV of the Act and of this part.

5. Section 400.5 is revised to read as follows:

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of, and describe the organization and functions of, a State agency (or agencies) responsible for developing the plan and administering, or supervising the administration of, the plan;

(b) Describe how the State will coordinate cash and medical assistance with support services to ensure their successful use to encourage effective refugee resettlement and to promote employment and economic self-sufficiency as quickly as possible.

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement in the State;

(e) Provide for, and describe the procedures established for, the care and supervision of, and legal responsibility (including legal custody and/or guardianship under State law, as appropriate) for, unaccompanied refugee children in the State;

(f) Provide for and describe (1) the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and (2) the procedures established to monitor any necessary treatment or observation;

(g) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion; and

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary agencies meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugee' arrival.

(i) Provide that the State will: (1) Comply with the provisions of title IV of the Act and official issuances of the Director; (2) meet the requirements in this part; (3) comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and (4) amend the plan as needed to comply with standards, goals, and priorities established by the Director.

(Approved by the Office of Management and Budget under Control number 0960-0418)

6. Section 400.6 is removed and reserved.

§ 400.6 [Reserved]

7. Section 400.7 is revised to read as follows:

§ 400.7 Submittal of the State plan and plan amendments for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor or his or her designee, for review, comment, and signature before the plan is submitted to ORR.

8. Section 400.8 is redesignated as § 400.200 and revised and the text of the section is set out under Subpart J, below. A new § 400.8 is added to read as follows:

§ 400.8 Approval of State plans and plan amendments.

(a) The State agency must submit the State plan and plan amendments which have been signed by the Governor, or his or her designee, together with one copy of such plan or amendment, to the Director of ORR, or his or her designee, for approval. States are encouraged to consult with the Director, or his or her designee, when a plan or amendment is in preparation.

(b) The Director, or his or her designee, may initiate any necessary discussions with the State agency to clarify aspects of the plan.

(c) No later than 45 days after the State plan or plan amendment is submitted, the Director, or his or her designee, will—(1) Determine whether a State plan or plan amendment meets or continues to meet requirements for approval based on relevant Federal statutes and regulations, and (2) approve or disapprove the plan or plan amendment.

(d) The Director, or designee, will notify the State agency promptly of all actions taken on State plans and amendments.

(e) The effective date of an approved State plan or plan amendment may not be earlier than the first day of the calendar quarter in which the State agency submits the plan or plan amendment, except as otherwise approved by the Director.

9. Section 400.9 is revised to read as follows:

§ 400.9 Administrative review of decisions on approval of State plans and plan amendments.

(a) Any State dissatisfied with a determination by the Director, or his or her designee, under § 400.8 with respect to any plan or plan amendment may, within 60 days after the date of notification of such determination, file a petition with the Director, or designee, for reconsideration of the determination.

(b) A State may request that a hearing be held, but it is not required to do so.

(c) If a State requests a hearing, the Director, or designee, will notify the State within 30 days after receipt of such a petition, of the time and location of the hearing to reconsider the issue.

(d) The hearing must be held not less than 30 days nor more than 60 days after the date the notice of the hearing is furnished to the State, unless the Director, or designee, and the State agree in writing on another time.

(e) The hearing procedures in Part 213 of this title will be used except that:

(1) "The Director" is substituted where there is a reference to "the Administrator," and

(2) "ORR Hearing Clerk" is substituted where there is reference to the "SRS Hearing Clerk."

(f) The Director will affirm, modify, or reverse the original decisions within 60 days of the receipt of the State's petition or, if a hearing is held, within 60 days after the hearing.

(g) The initiable determination by the Director, or designee, that a plan or amendment is not approvable shall remain in effect pending the reconsideration.

(h) If the Director reverses the original decision, ORR will reimburse any funds incorrectly withheld or otherwise denied.

§ 400.10 [Reserved]

10. Section 400.10 is redesignated as § 400.28 and revised and the text is set out under subpart C, below. Section 400.10 is therefore reserved.

11. Section 400.11 is redesignated as § 400.27 and revised and the text of the section is set out under subpart C, below. An undesignated center heading and new §§ 400.11 and 400.12 are added to read as follows:

Award of grants to States.

§ 400.11 Award of Grants to States

(a) *Quarterly grants.* Subject to the availability of funds, ORR will make quarterly grants to eligible States for the following purposes (and in accordance with the limitations of subpart J of this part): Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the

Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of Pub. L. 93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State. ORR will compute the amount of the quarterly award based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award.*

(1) *Estimates of reimbursable costs.* For quarterly grants under paragraph (a), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates, no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Quarterly adjustments.* If a State revises its quarterly estimates required in paragraph (b)(1), it must submit to the Director, or designee, the revisions, accompanied by a justification statement, no later than 30 days prior to the beginning of the quarter in which the revision or adjustment applies.

(c) *Financial status report.* A State must submit to the Director, or designee, a financial status report described in § 74.73(a) of this title, no later than 30 days after the end of each quarter, except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year.

(d) *Review.* ORR will determine whether the State's description of services, estimates, other relevant information, and any adjustments to be made for prior periods meet the requirements under this part, and will compute the quarterly award.

(e) *Grant award.* (1) ORR will transmit to the State the grant award form showing, by type of assistance, the amount of the award.

(2) The State may draw funds, under the Department's Payment Management System (PMS), as needed, to meet the Federal share of disbursements.

(Approved by the Office of Management and Budget under Control number 0960–0418.)

§ 400.12 Adverse determinations concerning State grants.

(a) *Policy.* The Secretary has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings on post-award disputes which may arise in the administration of certain grant programs by constituent agencies of HHS. Section 16.3(c) of this title mandates an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Board will be allowed. Paragraph (d) of this section provides an informal preliminary appeal process for resolution of such disputes within ORR prior to appeal to the Board.

(b) *Scope.* Adverse determinations to which this procedure is applicable are as follows:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project or program in accordance with applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void because the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

(c) *Notice of adverse determination.* If the Director, or his or her designee, makes an adverse determination with respect to a grant, he or she shall promptly issue a notice of adverse determination to the State which contains the reasons for the determination in sufficient detail to enable the State agency to respond and informing the State agency of the opportunity for review under paragraph (d) of this section.

(d) *Request for review of an adverse determination.* (1) If the State agency wants a review of the determination, it must submit a request for such review to the Director no later than 30 days after the postmark on the notice, unless an extension of time is granted for good cause.

(2) The request for review must contain a full statement of the State's position with respect to the determination being appealed and the pertinent facts and reasons in support of such position. The State agency must attach to the submission a copy of the notice.

(3) The Director may, at his or her discretion, invite the State to discuss pertinent issues and to submit such additional information as he or she deems appropriate.

(4) Based on his or her review, the Director will send a written response to the State. If the response is adverse to the State's position, the correspondence shall state the State's right to appeal to the Departmental Grant Appeals Board, pursuant to Part 16 of this title.

(e) *Request for appeal of an adverse determination.* (1) To appeal an adverse determination, a State agency must file an appeal with the Departmental Grant Appeals Board, in accordance with requirements contained in Part 16 of this title.

(2) The State's application for review must be postmarked no later than 30 days after the postmark on the Director's response to the State's request for review in paragraph (d)(4) of this section.

12. Section 400.62 is transferred to New Subpart E—Refugee Cash and Medical Assistance

12a. Section 400.62 is amended by removing paragraphs (a)(2), (3), and (4) and paragraph (f).

13. New Subparts C, D, J and K are added to read as set forth below and new Subparts F, G and I are added and reserved.

Subpart C—General Administration

§ 400.20–400.21 [Reserved]

§ 400.22 Responsibility of the State agency.

(a) The State agency may not delegate, to other than its own officials, responsibility for administering or supervising the administration of the plan.

(b) The State agency must have—

(1) Methods for informing staff of State policies, standards, procedures, and instructions; and

(2) systematic planned examination and evaluation of operations in local offices.

§ 400.23 Hearings.

(a) A State must provide applicants for, and recipients of, assistance and services under the Act with an opportunity for a hearing to contest adverse determinations using hearing procedures set forth in § 205.10(a) of this title for public assistance programs.

(b) If the issue is the date of entry into the United States of an applicant for or recipient of assistance or services, the State must provide for prompt resolution of the issue by inspection of the individual's documentation issued by the Immigration and Naturalization Service (INS) or by information obtained from INS, rather than by hearing.

§ 400.24 [Reserved]

§ 400.25 Residency requirements.

A State may not impose requirements as to duration of residence as a condition of participation in the State's program for the provision of assistance or services.

§ 400.26 [Reserved]

§ 400.27 Safeguarding and sharing of information.

(a) Except for purposes directly connected with, and necessary to, the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(b) The provision by a State to a voluntary resettlement agency, as defined in § 400.2, of information as to whether an individual has applied for or is receiving cash assistance and the individual's address and telephone number is to be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program during the first 36 months after such individual's entry into the United States.

§ 400.28 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program in accordance with Part 74, Subpart D, of this title. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the location, progress, and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical followup services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act on refugees who receive assistance and services which are provided, or the costs of which are reimbursed, under the Act.

(Approved by the Office of Management and Budget under control number 0960-0418).

Subpart D—Immigration Status and Identification of Refugees

§ 400.40 Scope.

This subpart sets forth requirements concerning the immigration status and identification of eligible applicants for assistance under title IV of the Act.

§ 400.41 Definitions

For purposes of this subpart—

"Applicant for asylum" means an individual who has applied for, but has not been granted, asylum under section 208 of the Act.

"Asylee" means an individual who has been granted asylum under section 208 of the Act.

Documentation of Refugee Status

§ 400.43 Requirements for documentation of refugee status.

(a) An applicant for assistance under title IV of the Act must provide proof, in the form of documentation issued by the Immigration and Naturalization Service (INS), of one of the following statuses under the Act as a condition of eligibility:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Act;

(2) Admitted as a conditional entrant under section 203(a)(7) of the Act;

(3) Admitted as a refugee under section 207 of the Act;

(4) Granted asylum under section 208 of the Act;

(5) Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director; or

(6) Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(b) The Director will issue instructions specifying the documentation that applicants for assistance must submit.

§ 400.44 Restriction.

An applicant for asylum is not eligible for assistance under title IV of the Act.

Subparts F-G—[Reserved]

Subpart H—Child Welfare Services

§ 400.110 Basis and scope.

This subpart prescribes requirements concerning grants to States under section 412(d)(2)(B) of the Act for child welfare services to refugee unaccompanied minors.

§ 400.111 Definitions.

For purposes of this subpart—

"Child welfare agency" means a agency licensed or approved under State law to provide child welfare services to children in the State.

"Unaccompanied minor" means a person who has not yet attained 18 years of age (or a higher age established by the State of resettlement in its child welfare plan under title IV-B of the Social Security Act for the availability of child welfare services to any other child in the State); who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close nonparental adult relative who is willing and able to care for the child or (c) an adult with a clear and court-verifiable claim to custody of the minor; and who has no parent(s) in the United States. *Limitation:* No child may be considered by a State to be "unaccompanied" for the purpose of this part unless such child was identified by INS at the time of entry as "unaccompanied," except that a child who was correctly classified as "unaccompanied" by a State in accordance with Action Transmittal SSA-AT-79-04 (and official interpretations thereof by the Director) prior to the effective date of this definition may continue to be so classified until such status is terminated in accordance with § 400.113(b) of this subpart; and the Director may approve the classification of a child as "unaccompanied" on the basis of information provided by a State showing that such child should have been classified as "unaccompanied" at the time of entry.

"Title IV-B plan" means a State's plan for providing child welfare services to children in the State under part B of title IV of the Social Security Act.

§ 400.112 Child welfare services for refugee children.

(a) In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV-B plan.

(b) A State must provide child welfare services to refugee children according to the State's child welfare standards, practices, and procedures.

(c) Foster care maintenance payments must be provided under a State's program under title IV-E of the Social

Security Act if a child is eligible under that program.

§ 400.113 Duration of eligibility.

(a) Except as specified in paragraph (b), a refugee child may be eligible for services under § 400.112 of this part during the 36-month period beginning with the first month the child entered the United States.

(b) An unaccompanied minor continues to meet the definition of "unaccompanied minor" and is eligible for benefits and services under §§ 400.115 through 400.120 of this part until the minor—

(1) Is reunited with a parent; or

(2) Is united with a nonparental adult (relative or nonrelative) willing and able to care for the child to whom legal custody and/or guardianship is granted under State law; or

(3) Attains 18 years of age or such higher age as the State's title IV–B plan prescribes for the availability of child welfare services to any other child in the State.

§ 400.114 [Reserved]

§ 400.115 Establishing legal responsibility.

(a) A State must ensure that legal responsibility is established, including legal custody and/or guardianship, as appropriate, in accordance with applicable State law, for each unaccompanied minor who resettles in the State. The State must initiate procedures for establishing legal responsibility for the minor, with an appropriate court (if action by a court is required by State law), within 30 days after the minor arrives at the location of resettlement.

(b) In establishing legal responsibility, including legal custody and/or guardianship under State law, as appropriate, the minor's natural parents should not be contacted in their native country since contact could be dangerous to the parents.

(c) Unaccompanied minors are not generally eligible for adoption since family reunification is the objective of the program. In certain rare cases, adoption may be permitted pursuant to adoption laws in the State of resettlement, provided a court finds that: (1) Adoption would be in the best interest of the child; and (2) there is termination of parental rights (for example, in situations where the parents are dead or are missing and presumed dead) as determined by the appropriate State court. When adoption occurs, the child's status as an unaccompanied minor terminates.

§ 400.116 Service for unaccompanied minors.

(a) A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State. Allowable benefits and services may include foster care maintenance (room, board, and clothing) payments; medical assistance; support services; services identified in the State's plans under titles IV–B and IV–E of the Social Security Act; services permissible under title XX of the Social Security Act; and expenditures incurred in establishing legal responsibility.

(b) A State may provide additional services if the Director, or his or her designee, determines such services to be reasonable and necessary for a particular child or children and provides written notification of such determination to the State.

§ 400.117 Provision of care and services.

(a) A State may provide care and services to an unaccompanied minor directly or through arrangements with a public or private child welfare agency approved or licensed under State law.

(b) If a State arranges for the care and services through a public or private nonprofit child welfare agency, it must retain oversight responsibility for the appropriateness of the unaccompained minor's care.

§ 400.118 Case planning.

(a) A State, or its designee under § 400.117, must develop and implement an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor, to ensure that the child is placed in a foster home or other setting approved by the legally responsible agency and in accordance with the child's need for care and for social, health, and educational services.

(b) Case planning for unaccompanied minors must, at a minimum, address the following elements:

(1) Family reunification;

(2) Appropriate placement of the unaccompanied child in a foster home, group foster care, residential facility, supervised independent living, or other setting, as deemed appropriate in meeting the best interest and special needs if the child.

(3) Health screening and treatment, including provision for medical and dental examinations and for all necessary medical and dental treatment.

(4) Orientation, testing, and counseling to facilitate the adjustment of the child to American culture.

(5) Preparation for participation in American society with special emphasis upon English language instruction and occupational as well as cultural training as necessary to facilitate the child's social integration and to prepare the child for independent living and economic self-sufficiency.

(6) Preservation of the child's ethnic and religious heritage.

(c) A State, or its designee under section 400.117 of this part, must review the continuing appropriatness of each unaccompanied minor's living arrangement and services no less frequently than every 6 months.

(Approved by the Office of Management and Budget under control number 0960–0418).

§ 400.119 Interstate movement.

After the initial placement of an unaccompanied minor, the same procedures that govern the movement of nonrefugee foster cases to other States apply to the movement of unaccompanied minors to other States.

§ 400.120 Reporting requirements.

A State must submit to ORR, on forms prescribed by the Director, the following reports on each unaccompanied minor:

(a) An initial report within 30 days of the date of the minor's placement in the State;

(b) A progress report every 12 months beginning with 12 months from the date of the initial report in paragraph (a);

(c) A change of status report within 60 days of the date that—

(1) The minor's placement is changed;

(2) Legal responsibility of any kind for the minor is established or transferred; or

(d) A final report within 60 days of the date of that the minor—

(1) Is reunited with a parent; or

(2) Is united with an adult, other than a parent, in accordance with section 400.113(b) or 400.115(c) of this part.

(3) Is emancipated.

(Approved by the Office of Management and Budget under control number 0960–0418).

Subpart I—[Reserved]

Subpart J—Federal Funding

§ 400.200 Scope.

This subpart specifies when, and the extent to which, Federal funding (FF) is available under this regulation in expenditures for determining eligibility and for providing assistance and services to refugees determined eligible under this part, and prescribes limitations and conditions on FF for those expenditures.

Federal Funding for Expenditures for Determining Eligibility and Providing Assistance and Services

§ 400.202 Extent of Federal funding.

Subject to the availability of funds and under the terms and conditions approved by the Director, FF will be provided for 100 percent of authorized allowable costs of determining eligibility and providing assistance and services in accordance with this part.

§ 400.203 Federal funding for cash assistance.

(a) Federal funding is available for cash assistance provided to eligible refugees during the 36-month period beginning with the first month the refugee entered the United States, as follows—

(1) If a refugee is eligible for AFDC, adult assistance programs, or foster care maintenance payments under title IV–E of the Social Security Act, FF is available only for the non-Federal share of such assistance.

(2) If a refugee is eligible for SSI, FF is available for any supplementary payment a State may provide under that program.

(b) Federal funding is available for refugees cash assistance (RCA) provided to eligible refugees during the 18-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for general assistance (GA) provided to eligible refugees during the 18-month period beginning with the 19th month after the refugee entered the United States.

§ 400.204 Federal funding for medical assistance.

(a) Federal funding is available for the non-Federal share of medical assistance provided to refugees who are eligible for Medicaid or adult assistance programs during the 36-month period beginning with the first month the refugee entered the United States.

(b) Federal funding is available for refugee medical assistance (RMA) provided to eligible refugees during the 18-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for a State's expenditures for medical assistance under a general assistance (GA) program during the 18-month period beginning with the 19th month after the refugee entered the United States.

§ 400.205 Federal funding for assistance and services for unaccompanied minors.

Federal funding is available for a State's expenditures for service to unaccompanied minors under §§ 400.115 through 400.120 of this part until the minor's status as an unaccompanied minor is terminated as specified by § 400.113.

§ 400.206 [Reserved]

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary indentifiable administrative costs of providing assistance and services under this part, and such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

§ 400.208 Claims involving filing units which include both refugees and nonrefugees.

(a) Federal funding is available for a State's expenditures for assistance and services to a filing unit which includes a refugee parent or two refugee parents and one or more of their children who are nonrefugees, including children who are United States citizens.

(b) Federal funding is not available for a State's expenditures for assistance and services provided to a nonrefugee adult member of a filing unit or to a nonrefugee child or children in a filing unit if one parent in the filing unit is a nonrefugee.

§ 400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.

Federal funding is not available for State expenditures for cash and medical assistance and child welfare services (except services for unaccompanied minors) provided to any refugee within a filing unit who has been in the United States

(a) more than 36 months if the filing unit is eligible for AFDC, SSI, Medicaid, GA, or child welfare services (except services for unaccompanied minors), or

(b) more than 18 months if the filing unit is eligible for RCA or RMA. A State agency must exclude expenditures made on behalf of such refugees from its claim.

§ 400.210 Time limit for filing of State claims.

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which a claim is filed no later than

(a) one year after the end of the Federal fiscal year in which the grant was awarded in the case of a grant for cash assistance, medical assistance, and related administrative costs, and

(b) two years in the case of a grant for social (support) services.

Subpart K—Waivers

§ 400.300 Waivers.

If a State agency administering a plan approved under this part demonstrates, to the satisfaction of the Director, that it cannot reasonably comply with a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: July 25, 1985.

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 86–1718 Filed 1–29–86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance; Requirements for Job Search, Employability Services, and Employment; Refugee Medical Assistance; and Refugee Support Services

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth requirements governing refugee cash assistance; job search, employability services, and employment on the part of applicants for, and recipients of, refugee cash assistance; refugee medical assistance; and refugee support (social) services.

This regulation would complete the issuance of comprehensive regulations covering the basic operation of the State-administered Refugee Resettlement Program (RRP). Regulations covering other aspects of the program are published elsewhere in this issue of the **Federal Register**, covering grants to States, general administration, immigration status and identification of refugees, child welfare services, and Federal funding. An existing regulation on refugee cash and medical assistance and Federal funding may be found at 45 CFR 400.62. In addition to covering a number of aspects of the RRP not included in the previous regulations, the present proposal would revise some policies previously set forth in Action Transmittals to the States and would also make a few modifications in the existing regulations, including the final rule published elsewhere in this issue.

DATE: To assure consideration, comments should be received by April 30, 1986.

ADDRESSES: Comments should be addressed to Christie Cohagen, Office of Refugee Resettlement, Department of Health and Human Services, Room 1229 Switzer Building, Washington, DC 20201.

If you prefer, you may deliver your comments to Room 1229–A Switzer Building, 330 C Street SW., Washington, DC.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m., except Federal holidays.

Because of the large number of comments expected, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received during the comment period and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Christie Cohagen, (202) 245–1059.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the United States had been aided under separate programs for (1) Cuban refugees, (2) Indochinese refugees, and (3) Soviet and other non-Cuban, non-Indochinese refugees. Those programs were regarded as temporary, and, therefore, the issuance of program instructions to the States through Action Transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the RRP began the issuance of formal regulations, at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR 59323), covering State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841), and the subjects cited above under Summary which are published elsewhere in this issue.

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation for the most part ratifies practices already in place and therefore would not be creating costs. To the extent that changes from current policy are proposed, the regulation would be intended to reduce costs by aiding refugees to achieve earlier employment and self-support.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 505(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule will indirectly affect small entities because some services funded in the RRP are provided by not-for-profit institutions under contract with the States. However, nothing in the rule imposes a significant burden on these small entities, and the rule therefore does not meet the threshold for regulatory flexibility analysis.

Sections 400.11, 400.55, 400.64, 400.79, 400.82, 400.94, and 400.147 of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these reporting and recordkeeping requirements. Organizations and individuals desiring to submit comments on these collection-of-information requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN Desk Officer for HHS/SSA.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

This proposed regulation restates some current policies and modifies or augments others. The changes in policy which are proposed here have one central aim: To aid refugees in achieving earlier employment and self-support.

Throughout the Nation there is wide variation in the extent to which, and rapidity with which, refugees find employment and become self-supporting. In some States, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first three years in the United States receiving fully federally funded welfare assistance and, after the completion of that statutory three-year period, may continue on assistance, usually financed by a combination of Federal and State funds and sometimes by local funds as well.

Refugee dependency rates, as measured by the portion of the refugee population that has been in this country less than three years and is receiving cash assistance, range from a high of over 80 percent in two States to less than 20 percent in several other States. These wide differences among States do not appear to be fully explainable by differences in the employment situation in various States, or by differences in the scope and benefit levels of existing

welfare programs, or by differences in the background, training, and work experience of the refugees themselves.

At the same time, there are substantial differences in the ways in which different States carry out the RRP. In some States, refugee services (such as English language training) are widely available outside normal working hours, refugees are referred to job opportunities soon after their arrival in the U.S., become employed, and are able to continue their training. In other States, refugee services tend to be available only during working hours, refugees are enrolled for services and training on a relatively long-term basis, are not required to seek employment, and referrals to job opportunities do not occur until much later. This regulation attempts to address these problems by including more specific requirements for the way in which the RRP is to be carried out by States and the employment-related requirements that apply to a refugee who is receiving refugee cash assistance (RCA).

Thus Subpart F, Requirements for Job Search, Employability Services, and Employment, proposes substantial changes from current requirements. Subpart F would: Require a continuing program of job search by an RCA recipient; specify that the job search requirements can be offset only by certain specific employment services which are themselves directed toward effective job search and placement; and provide that, in general, training which is offered during normal working hours cannot substitute for job search and job acceptance. These proposals are intended to give priority to the earliest possible employment and to require that priority be given to those activities by which people usually get jobs—employment services and actual contacts with potential employers. At the same time, the proposals are intended to assure that needed services are available to refugees who become employed by giving priority to the provision of those services outside normal working hours.

Subpart I, Refugee Support Services, would regroup the designation of support (social) services to fit in with the requirements of Subpart F and the current requirement (50 FR 8194, February 25, 1985) that a State use 85 percent of its ORR refugee support (social) service allocations for employment services, English language training, and case management—identified herein as "employability services."

As a result of the changes proposed in subparts F and I, we believe that most of the specific eligibility requirements for particular services (as currently set forth in Action Transmittals SSA–AT–79–33, August 24, 1979; ORR–AT–80–1, March 26, 1980; and ORR–AT–80–2, April 28, 1980) could be dropped, simplifying the administration of the support service program for States and service providers while assuring that services would be directed toward the major objective of the program—the early employment of refugees.

We especially invite comments on the new elements contained in this proposal and encourage commenters who may take exception to aspects of the proposal to suggest alternative means of addressing the serious problems faced by refugees who are not being helped to become employed and move toward self-support under current practices.

Other changes which this proposal introduces are described in the sections which follow on the several subparts.

Subpart A—Introduction (Section 400.2)

Two changes are made in the list of definitions in § 400.2: A definition of "case management services" is inserted in the definitions in § 400.2, and these services are further addressed in §§ 400.154(j) and 400.155(g) of Subpart I. The definition of "refugee medical assistance" is updated to include references to the appropriate sections of Subpart G.

Subpart B—Grants to States for Refugee Resettlement (Sections 400.11 and 400.13)

Section 400.11(a) is revised to conform with ORR's present policy, begun in fiscal year 1985, of issuing two types of basic grants to States for the operation of the State-administered refugee program: (1) CMA grants, covering funding for cash assistance, medical assistance, the program for refugee unaccompanied minors, and related State administrative costs; and (2) support (social) services grants to fund the activities identified in Subpart I.

Section 400.11(b) is revised to require a State to submit an annual State administrative costs budget as part of its application for CMA and support services funds. This requirement is in accordance with HHS grant regulations at 45 CFR Part 74 and would use the Standard Form 424. This requirement is intended to provide ORR with information needed to assist it in carrying out its responsibility of assuring the allowability and appropriate allocation of anticipated administrative costs and their compatibility with the approved State plan.

A new § 400.13 is added on cost allocation. This provision would place in regulatory form ORR's current cost-allocation guidelines which were issued after consultation with the States. A principal purpose of the guidelines is to assure that costs are correctly allocated between the RRP and other programs administered by the State and, within the RRP, between the CMA and support services grants. Paragraph (c) of this section would continue to permit certain overall management costs to be charged against the CMA grant. Paragraph (d) identifies the circumstances under which certain case management costs may be charged against the CMA grant, again reflecting current policy.

Subpart C—General Administration (Section 400.27)

A new paragraph (c) is added to § 400.27, "Safeguarding and sharing of information," to clarify that information concerning persons who have applied for or received assistance or services under the RRP may be released for any of the same purposes as are permissible under the AFDC program, as set forth in 45 CFR 220.50(a). Such purposes include: Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program; any other Federal or federally assisted, needs-based assistance or service program; any audit or similar activity; and the location or apprehension of a fugitive felon.

Subpart E—Refugee Cash Assistance (§§ 400.50 throught 400.64)

Subpart E proposes rules governing refugee cash assistance. *The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for the programs of aid to families with dependent children (AFDC) and supplemental security income (SSI) for the aged, blind, and disabled.* The provisions of this subpart do not govern the receipt of assistance by refugees who qualify for AFDC or SSI; they must meet the requirements of those programs which apply to refugees and nonrefugees alike.

Current regulations at 45 CFR 400.62 set forth the basic policies with respect to the provision of refugees cash assistance (RCA) and the extent and duration of Federal refugee program funding for RCA and other cash assistance programs for which refugees may qualify. The present regulation restates, but does not change, those rules.

The major changes proposed in this subpart relate to considering a household, rather than a family unit, as the filing unit for RCA (§ 400.63) and

requiring (rather than leaving as an option) the application of certain additional AFDC provisions to the RCA program (§ 400.64).

A. Recovery of Overpayments and Correction of Underpayments (§ 400.52)

Section 400.52 confirms current practice by applying AFDC rules when overpayments or underpayments occur.

B. Applications, Determinations of Eligibility, and Furnishing Assistance (§§ 400.55 through 400.57)

Under current policy, when a refugee applies for cash assistance a State must first determine his or her eligibility under other federally aided public assistance programs (i.e., AFDC, SSI, or—in Guam, Puerto Rico, and the Virgin Islands—old age assistance (OAA), aid to the blind (AB), aid to the aged, blind, and disable (AABD), or aid to the permanently and totally disabled (APTD)). States must comply with regulations governing applications, determinations of eligibility, and furnishing assistance under the AFDC program at 45 CFR Part 206.

If a refugee is eligible under one of the above programs, a State must provide assistance to that refugee under the appropriate program. If a refugee does not meet the categorical requirements of these other public assistance programs (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for RCA.

In determining RCA eligibility, a State is required to contact an applicant's sponsor or the resettlement agency to determine the amount of assistance, if any, being provided to the refugee and to inquire whether the applicant has voluntarily quit employment or refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application. This requirement ensures that States verify at the time of application that a refugee has not refused to accept an offer of employment within 30 days prior to the date of application for assistance, in accordance with current policy contained in § 400.77(a) of the proposal.

Section 400.55(d) clarifies existing policy by requiring a State to distinguish clearly, in its applications for assistance and notices to recipients, between RCA, AFDC, and GA. The purpose of this requirement is to assure that clients are appropriately informed of their eligibility or ineligibility and receive information sufficiently specific to enable them to exercise their right to appeal if they wish to do so.

C. Conditions of Eligibility for Refugee Cash Assistance (§§ 400.60 through 400.64)

Under current policy, refugees who are ineligible for AFDC, SSI, OAA, AB, AABD, or APTD, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with 45 CFR 233.20(a) (3) through (11) (except that the two earned income disregards of $30 and of $30 plus one-third at § 233.20(a)(11)(ii)(B) are not applied), are eligible for refugee cash assistance if they have resided in the U.S. less than 18 months following their initial entry into this country. In determining financial eligibility, a State may not consider income and resources of a refugee's sponsor which are not contributed to the refugee, or a refugee's resources which are not readily accessible to the refugee—e.g., resources in the refugee's country of origin. A State may not apply to applicants for or recipients of refugee cash assistance the rule under the AFDC unemployed parents program at 45 CFR 233.100(a)(1) that generally defines unemployment as employment less than 100 hours a month. Eligible refugees receive benefits and services at levels equivalent to those provided under the State's AFDC program. This regulation would continue the current policy.

Section 400.60(a)(5)) adds a requirement that a refugee provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the State to verify any assistance being provided and to determine whether the refugee has quit or refused employment, as required under § 400.55(b) (3) and (4). Section 400.60(a)(5) places on the refugee the responsibility for providing the name of the resettlement agency by making this a condition of eligibility. This requirement would not apply to asylees since persons granted asylum under section 208 of the Act do not usually have a sponsoring resettlement agency.

D. Use of Household Filing Unit (§ 400.63)

A major change is proposed in the definition of a filing unit (assistance case) under the RCA program. Under current policy, a State may, but is not required to, us a household, rather than a smaller case unit, as the filing unit for RCA. Under this proposal, the State would be required: (1) To consider as a single filing unit two or more RCA applicants or recipients living in the same household; and (2) in a household including persons other than the RCA applicants or recipients, to take into account the needs, resources, and income (including payment received under other programs) of all persons living in the household in determining the eligibility and amount of assistance to the RCA applicants or recipients, except that the amount of the RCA payment could not exceed that which would be arrived at by considering only the RCA filing unit.

We believe that this use of the household concept will result in more fair and equitable levels of assistance which are generally more in line with assistance available to nonrefugees. The household concept is used by States in the food stamp program—including the eligibility of refugees for food stamps—and we do not believe that it will impose a burden if applied to the RCA program.

Use of the household concept will not affect the amount of assistance provided to refugees who are eligible under the programs of AFDC, SSI, GA, or adult assistance in the territories, except as might otherwise be provided in the eligibility and benefit criteria for those programs. In a household which includes such assistance units as well as RCA recipients, the amount of assistance to only the RCA recipients will be affected by the household concept.

E. Other AFDC requirements applicable to refugee cash assistance (§400.64).

This section would formalize the applicability of certain additional AFDC requirements to the RCA program with respect to budgeting methods, determining eligibility, computing the assistance payment, recovering overpayments and correcting underpayments, and identifying and dealing with fraud.

This section would also apply to RCA the AFDC requirements regarding monthly reporting. Monthly reporting is especially applicable to caseloads in which changes in employment and income are likely to occur—such as the RCA caseload which excludes the aged, blind, and disabled who are covered under SSI and the one-parent families which are covered under AFDC.

Subpart F—Requirements for Job Search, Employability Services, and Employment

Refugees who apply for or receive refugee cash assistance (RCA) must meet the requirements in Subpart F of these rules. These proposed rules are based on requirements of the Refugee Act, as amended. The rules in Subpart F apply to RCA applicants and recipients. Refugees who receive AFDC must meet

the requirements of that program rather than Subpart F.

A. Arrangements for Employability Services (§ 400.72)

Section 400.72 of the proposed regulation allows States to make certain arrangements with appropriate agencies to provide refugees with required employability services as defined in § 400.71. It also formalizes a requirement that an agency providing employability services, in order to qualify to receive referrals of employable refugees by the State agency, must agree to advise the State agency whenever a refugee fails or refuses to participate in the required services or to accept an offer of employment.

Employable applicants for or recipients of refugee cash assistance must meet the requirements in Subpart F concerning registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

B. Registration for Employment Services, Participation in Employability Service Programs, and Acceptance of Offers of Employment (§ 400.75)

Section 400.75 generally reflects § 412(e)(2)(A) of the Immigration and Nationality Act, which, except for good cause shown, conditions the receipt of cash assistance by an employable refugee on that refugee's registration with an agency offering employment services specifically designed to assist refugees in attaining economic self-sufficiency. If no such agency is available, the refugee must register with the State or local employment service. Section 412(e)(2)(A) of the Act also conditions receipt of cash assistance on the participation of employable refugees in available and appropriate social service programs, funded under § 412(c) of the Act, which provide job or language training.

Section 400.75 clarifies the registration requirement by specifying that an "appropriate agency providing employment services" means (as defined in § 400.71) an agency whose services must include "an established program of job referral to, and job placement with, private employers" and "must be determined acceptable by the State." Previous studies have shown that some referrals for employment services were being made to agencies whose services did not include job referral and placement.

This section also requires that an employable refugee must participate in a continuing program of job search, described subsequently in § 400.80.

These proposed requirements are intended to encourage early employment.

C. Criteria for Exemption from Registration (Section 400.76)

Section 400.76 exempts certain individuals from registration for employment services and required social services because of age, full-time attendance at school or training, health, disability, or responsibility for the care of a child or another member of the household. These exemptions, which are contained in current policy, are modeled after exemptions which apply to AFDC recipients.

Inability to communicate in English does not exempt a refugee from registration.

D. Effect of Nonparticipation in Services and of Quitting Employment (§ 400.77)

Under current policy, employable refugees may not, without good cause, within 30 consecutive days prior to the date of application, or at any time when receiving refugee cash assistance, have voluntarily quit employment or refused to accept an appropriate offer of employment services, training, or employment. Section 400.77 formalizes these requirements.

E. Service Requirements for Employed RCA Recipients (Section 400.78)

A recipient of refugee cash assistance who is employed less than 30 hours a week must accept appropriate part-time English language training or other employment-related training if available.

Under current policy, a State may encourage but not require part-time English or other employment-related training if a recipient is employed full time. Section 400.78(b) would revise this to permit a State to require part-time training in this circumstance. We believe that providing this flexibility to a State is in keeping with the self-sufficiency objective of the refugee program since such training can aid a refugee who is partially supported by cash assistance to acquire additional skills which may lead to advancement, higher income, and full self-support.

Language has also been included to provide that employed recipients may not be required to accept services which interfere with their jobs.

F. Development of an Employability Plan (§ 400.79)

Section 400.79 formalizes current practice in the refugee program by requiring the State agency, or its designee, to develop an employability plan for each registrant if such a plan has not been developed by the resettlement agency. This requirement is based on similar requirements applicable to AFDC recipients under the WIN program.

Section 400.79 clarifies current practice by requiring that the employability plan be designed to lead to the earliest possible employment and contain a definite employment goal that would be attainable in the shortest possible time period consistent with a refugee's employability and the local job market. This section also imposes a new requirement, by providing that the employability plan must enable the individual to meet the job search requirements of § 400.80.

We believe that this focus is essential to promoting early employment. Information has shown that, under existing practices, employability plans are often constructed which defer job search and employment for all or nearly all of the 18-month period of potential eligibility for RCA.

G. Job Search Requirements (§ 400.80)

Although current policy emphasizes employment and self-support and requires registration for employment services and acceptance of job offers, it does not contain specific requirements for a job search program to be carried out by RCA applicants and recipients.

Section 400.80 specifically requires an employable applicant for or recipient of refugee cash assistance to carry out a continuing job search program of at least 20 hours of employer contacts per week (including necessary travel time). The time requirement may be expressed in terms of number of employer contacts, at the discretion of the State agency.

Necessary employment services, employability assessment services, and on-the-job training (but not other types of services) may be counted against the job-search time (or number-of-contacts) requirements.

These provisions for job search are intended to reflect the primary emphasis of the resettlement program on early employment and, together with other requirements, to result in a required, focused program consisting of the services and activities necessary to achieving early job placement: Employability assessment and planning; employment services to provide the orientation, information, and guidance necessary for effective job search; referrals to employment opportunities; and contacts with potential employers until job placement is achieved.

H. Criteria for Appropriate Employability Services and Employment § 400.81).

Section 412(e)(2)(B) of the Act conditions receipt of refugee cash assistance (RCA), except for good cause shown, on a refugee's acceptance of appropriate offers of employment. Under current policy, criteria and standards adapted from regulations governing WIN (45 CFR 224.34), and referenced in § 400.81, are used by the State agency or its designee to determine if a particular job or training opportunity is appropriate.

Existing policy does not require an RCA recipient to accept a job if he or she is receiving training as part of an employability plan approved by the welfare agency. Section 400.81(c) changes current policy by requiring a refugee to accept an appropriate job offer even if it interrupts participation in a program of services unless such services are being provided on evenings or weekends. This section also prohibits the scheduling or provision of services at times which would interfere with a refugee's required job search activities. Exceptions are made for employment services, employability assessment services, and on-the-job training (as described in paragraphs (a), (b), and (c) of § 400.154) since these services are specifically directed toward effective job search and job placement, and for refugee professionals who are enrolled full-time in an approved professional recertification program intended to assist them in becoming relicensed in order to practice their professions in the United States (as described in section 400.81(b)).

I. Failure or Refusal to Carry out Job Search or to Accept Employability Services or Employment §§ 400.82 and 400.83)

Under current policy, if an employable recipient of cash assistance refuses to register for or to accept or continue an employment or training opportunity without good cause, the State agency must terminate assistance with the month of such refusal. This sanction remains in effect for 3 payment months in the first instance, and for 6 payment months in any subsequent instance. Current policy also includes a provision for hearings, as contained in § 400.83.

Under existing policy, only the individual who fails to meet the employment and service requirements is sanctioned. By referencing sanctions applicable to the employment search program under AFDC, § 400.82(b)(3) would require the State agency to designate a "principal earner" in the filing unit (if the unit contains an employable person) and to sanction the entire filing unit based on the failure of that individual to meet requirements.

The inclusion of failure or refusal to carry out job search as a basis for sanction is also a change from current policy, reflecting the addition of job search requirements by § 400.80.

Subpart G—Refugee Medical Assistance

A State must provide a program of refugee medical assistance (RMA) in accordance with the rules in Subpart G.

A. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.93 and 400.94)

Under current policy, a State must first determine the eligibility of each applicant for Medicaid, complying with regulations governing applications, determinations of eligibility, and furnishing Medicaid under 42 CFR Part 435, Subpart J (in the States and the District of Columbia), and 42 CFR Part 436, Subpart J (in Guam, Puerto Rico, and the Virgin Islands). A State with a medically needy program under 42 CFR Part 435, Subpart D, must also determine a refugee's eligibility under that program.

A State must provide Medicaid to eligible refugees. If a refugee is determined ineligible for Medicaid, the State must determine eligibility for refugee medical assistance (RMA).

As set forth in the definition under section 400.2 of this part, the term "refugee medical assistance" (RMA) refers specifically to medical assistance to refugees who do not meet all eligibility requirements for Medicaid, to services provided under section 400.106 to refugees who are eligible either for RMA or for Medicaid, and to services provided under section 400.107.

Section 400.93(d) requires a State to distinguish clearly, in its applications for medical assistance and notices to recipients, between RMA and Medicaid. This is identical to the requirement concerning cash assistance at § 400.55(d).

B. Conditions of Eligibility for Refugee Medical Assistance (Sections 400.100 through 400.104)

Under current policy, a State must determine eligibility for refugee medical assistance of refugees who are ineligible for Medicaid. Recipients of refugee cash assistance are eligible for refugee medical assistance. Also, refugees who are eligible for but not receiving refugee cash assistance are eligible for refugee medical assistance, and States may not require them to actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance. Medicaid categorical eligibility requirements (family composition, age, disability, or blindness) are not applied to applicants for refugee medical assistance.

In States with Medicaid medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's medically needy financial eligibility standards under Medicaid regulations at 42 CFR Part 435, Subpart I, and regulations governing determining income eligibility in 42 CFR 435.831, as reflected in the State's approved title XIX State Medicaid plan.

In States without medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's AFDC need standard established under 45 CFR 233.20(a)(2) and regulations governing consideration of income and resources under the AFDC program in 45 CFR 233.20(a) (3) through (11) except that the $30 and one-third disregard does not apply. In addition, under section 400.103 of this proposed regulation, if an applicant for refugee medical assistance in a State without a medically needy program does not meet the State's AFDC need standard, the State must allow the applicant to "spend down" to the AFDC need standard using methods for deducting incurred medical expenses in 42 CFR 435.831(c). This means that an applicant with income in excess of the AFDC need standard may deduct from his or her countable income any incurred medical expenses, thereby lowering the amount of countable income to the AFDC need standard and potentially qualifying the applicant for refugee medical assistance.

Section 400.100(a)(4), a proposed change from current policy, has been included to make clear that a State may not determine a refugee to be eligible for medical assistance if the refugee's eligibility for cash assistance has been terminated because of failure or refusal to carry out job search or to accept employability services or employment. We do not believe it would be appropriate for a refugee to continue to be eligible for either cash or medical assistance in the event of refusal to carry out employment-related requirements.

Section 400.104, a new proposal, would extend the medical assistance eligibility of an RMA recipient who became ineligible solely because of increased earnings from employment. The period of extension would be for nine months or until the refugee reached

the end of his or her 18-month period in the United States, the termination date for RMA eligibility—whichever occurred first. This RMA proposal is patterned after a Medicaid "work transition" provision enacted by section 2624 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amending section 402(a) of the Social Security Act. However, the RMA proposal differs from the Medicaid provision enacted by section 2624 in that the latter is related specifically to the termination of an AFDC income disregard which is not applied in the RCA and RMA programs; therefore the RMA proposal relates to the closely comparable situation in which eligibility results from increased earnings. The Medicaid provision also allows States to continue the eligibility extension for a total period of 15 months. Taking into account that 18 months represents a refugee's total potential eligibility for RMA, we consider it appropriate to allow in RMA only the basic 9-month extension which applies in the Medicaid program.

Thus this, RMA provision would continue the RRP's established policy of generally following Medicaid provisions in the RMA program, with modifications where specific factors relate to the situation of refugees or to the nature of the refugee program requires differences.

C. Scope of Medical Services (Sections 400.105 through 400.107)

A State must provide refugees eligible for refugee medical assistance at least the same services in the same manner and to the same extent as are provided under the State's Medicaid program. If refugees need medical services which are beyond the scope of the State's Medicaid program, but which are available to destitute U.S. citizens in the State through public facilities, such as county hospitals, the State agency may provide such services to eligible refugees through public facilities in order to avoid refugees' becoming a burden on publicly funded local facilities.

Section 400.107 clarifies current policy with respect to health assessments of newly arrived refugees by specifically permitting such assessments as part of the scope of services of the RMA program if they are provided in accordance with requirements established by, and with the approval of, the Director. If such an assessment is done during a refugee's first 90 days in the United States, it could be provided as part of the RMA program without prior determination of the refugee's eligibility for RMA or Medicaid and without regard to whether the refugee is subsequently determined eligible for either RMA or Medicaid.

Subpart I—Refugee Support Services

A State must provide refugee support services in accordance with the rules in subpart I.

A. Applications, Determinations of Eligibility, and Provision of Services; Funding and Service Priorities; and Purchase of Services (Sections 400.145 through 400.148)

Under current policy, States follow procedures established for their social service programs under title XX of the Social Security Act with respect to providing refugees with the opportunity to apply for services, determining eligibility, and providing services. States currently purchase services for refugees from public and private service providers or provide services directly. The proposed rule does not change these current practices.

Section 412(a)(6)(B) of the Immigration and Nationality Act authorizes the Director to develop, and require States to meet, "Standards, goals, and priorities . . . which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services." Under this authority, the Director previously established as a priority "the provision of English language training and employment services" (section 400.1(c) of the existing regulations, unchanged in this proposed rule), section 412(a)(6)(A)(ii) of the Act requires that plans submitted by States contain "a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance" (reflected in § 400.5(c) of the existing regulations).

In light of the intent of the Act, the number of refugees dependent on cash assistance, and the limited funds available for training and services, §§ 400.146 and 400.147 establish funding and service priorities.

Section 400.146, reflecting current policy, requires States to use at least 85 percent of their support service grants to provide employability services (specified by § 400.154) and not more than 15 percent to provide other services (specified by § 400.155).

Previously, in a statement of program goals, priorities, and standards issued to States—first in August 1982 and with revisions in March 1984—the Director of ORR set as objectives that 85 percent of ORR support service funds be targeted for employment services and English language training and that services be focused on the earliest possible movement of refugees from cash assistance to self-sufficiency. Subsequently, this was established as a requirement by notice in the **Federal Register** (50 FR 8194, February 28, 1985) after consideration of public comments. Section 400.146 reflects this current policy. We would continue to consider waivers (under 45 CFR Part 400, Subpart K) in accordance with the following criteria stated in the **Federal Register** notice:

> ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15 percent. [*Idem.*]

Section 400.147 proposes revisions in current policy:

Section 400.147(a) requires that a State's support service program use an appropriate portion of funds to provide services to newly arriving and recently arrived refugees. This is intended to avoid a situation, which has sometimes occurred, in which employment-directed services are concentrated on refugees around the time that their 18-month eligibility for RCA or their 36-month eligibility for fully federally funded cash assistance expires rather than at or near the time of their arrival.

Section 400.147(b) would continue the existing priority for the provision of services to cash assistance recipients. It would also require that a higher priority be given to those refugee assistance recipients who are within their first 36 months in the United States (and are therefore receiving fully federally funded cash assistance) than to those recipients who have been here for more than 36 months. This emphasis is important to achieving early employment and reducing both Federal assistance costs and State/local assistance costs that occur after the period of full Federal funding has terminated if employment has not previously been attained.

Section 400.147(c), also directed toward helping refugees to achieve early self-support, would require that support services (except for certain emergency services) be provided only to refugees who have been in the United States less than 36 months unless the State is able to demonstrate that there are "extreme

and unusual needs" among its refugees who have been here for a longer period of time.

B. Conditions of Eligibility for Refugee Support Services (Sections 400.150 through 400.152)

Under existing policy, a refugee who meets immigration status and documentation requirements may receive any social service permissible under a State's title XX program. In addition, certain specific services are identified as "refugee support services" (previously termed "refugee social services") and may be provided in accordance with eligibility criteria based on receipt of cash assistance, family income, age, and employment status. The existing criteria are as follows:

—The following refugee support services may be provided to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, without regard to other criteria: English language training; career counseling; job orientation; and job placement and followup.

—In addition to the age/nonstudent criterion previously stated, refugees who are unemployed or receiving cash assistance may receive the following services: Employability assessment; development of an individual employability plan.

—In addition to the age/nonstudent criterion previously stated, refugees who are within the family income limit (not more than 90 percent of a State's median family income) or receiving cash assistance (but not necessarily unemployed) may receive the following services: Job development; vocational training; and skills recertification.

—To receive the following, service refugees must be within the family income limit or receiving cash assistance (but other criteria do not apply): Day care; transportation; and translation/interpreter services.

—The following services may be provided to refugees without regard to any of the above eligibility criteria: Outreach; social adjustment.

Under the present proposal, employability services (section 400.154) would continue to be limited to persons 16 years of age or older who are not full-time students in elementary or secondary school, except that employment services could be provided to enable a student to obtain part-time or summer work or full-time permanent employment upon completion of schooling. In addtion, title XX social services provided under § 400.155(h) would be subject to whatever limitations apply under a State's title XX program.

The requirements for all other specific eligibility limitations would be removed (i.e., receipt of cash assistance, unemployment, and income limitations). We believe that this step—when combined with the requirements that 85 percent of support service funds be used for employability services, that an appropriate portion be used for newly arriving and recently arrived refugees, that priority be given to cash assistance recipients, and that support services be generally limited to refugees who have less than 36 months' U.S. residence—can improve the focus of support services and at the same time provide greater flexibility to, and less complexity for, States in designing and implementing their programs in order to achieve the most effective outcomes in terms of increased employment and self-support and reduced dependency.

C. Scope of Refugee Support Services (Sections 400.154 and 400.155)

Under current policy, refugees may receive any service which is permissible under a State's title XX program. In addition, refugees may receive any of a specified list of refugee support services which a State may provide regardless of whether these services are included in the State's title XX program.

Under this proposal, the scope of allowable services remains unchanged from current policy, except for the limitation in § 400.156(a), described below. In addition, "case management services" has been added to the list, recognizing an already allowable service not previously specifically identified.

However, the allowable services have been regrouped and in some instances slightly redefined in accordance with the employment objective of the program: Section 400.154, "Employability services," identifies and defines those services directed toward refugee employment, for which at least 85 percent of a State's support service funds must be used. Section 400.155, "Other services," identifies and defines those services not necessarily specifically directed toward employment, for which not more than 15 percent of support service funds may be used.

D. Limitation and Restrictions (Section 400.156)

Under current guidance, States have been instructed to avoid duplication of services and to provide English language training generally outside normal working hours. Section 400.156 would formalize, and add to, the existing guidance.

Section 400.156(a) prohibits a State from using support services funds to provide orientation to Western culture or basic local orientation since this is a responsibility of a refugee's sponsoring resettlement agency under its agreement with the Department of State. This specific limitation will aid in clarifying roles and averting potential duplication.

Paragraph (b) of this section formalizes the requirement that English language instruction be provided to the fullest extent feasible outside normal working hours and applies the same requirement to vocational training. This will be beneficial to refugees in becoming employed and continuing their training, particularly in light of the new rules which require a program of job search by cash assistance recipients and which provide that training offered during daytime hours on weekdays may not be a substitute for job search and employment.

Under existing practices, many training courses are offered during daytime hours, making it difficult for refugees to accept employment without having to terminate their participation in English or other training. Resettlement workers have frequently cited this as a basic problem. In addition, in the Refugee Assistance Amendments of 1982, Congress made clear its intent that English language training should be provided "in nonwork hours where possible" and that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" (section 412(a)(1) of the Act as amended by section 3(a) of the 1982 Amendments). This proposed regulation addresses these needs.

Paragraph (c) of this section requires a State to take into account services which a resettlement agency may be required to provide for a refugee and not to duplicate those services through its support service program.

Subpart J—Federal Funding

A new § 400.206 is added in Subpart J to cover funding for support services, and a new § 400.220 is added to clarify the calculation of refugee time-eligibility. Both of these sections represent existing policy.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

45 CFR Part 400 is amended as follows:

1. The Table of Contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.21 [Amended]

2. Section 400.2 is amended by alphabetically adding the definition for the term "case management services", and by revising paragraph (b) of the definition of the term "Refugee medical assistance" to read as follows:

"Case management services" means the determination of which service(s) to refer a refugee to, referral to such

service(s), and tracking of the refugee's participation in such service(s).

* * * * *

"Refugee medical assistance" * * * (b) services provided in accordance with sections 400.106 and 400.17 of this part.

* * * * *

3. Section 400.11 is amended by revising paragraphs (a) and (b)(1), by redesignating existing paragraph (b)(2) as (b)(3), and by adding new paragraphs (b)(2) and (b)(4) to read as follows:

§ 400.11 [Amended]

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants"),* for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and National Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of Pub. L. 93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) grants for support services; as set forth in this part. ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

* * * * *

(b) *Form and manner of State application for grant award.* (1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative cost, including assistance and services to unaccompanied minors (hereafter, "CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, including a State administrative costs budget, and a justification statement in support of the estimates no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee support services.* For quarterly grants for refugee support services, a State must submit to the Director, or designee, an annual application, including a State administrative costs budget, no later than 45 days prior to the beginning of the fiscal year on Standard Form 424 or such other form as might subsequently be prescribed by the Director.

* * * * *

(4) The State administrative costs budgets included under paragraphs (b)(1) and (2) must be of sufficient descriptive detail to enable determination of the allowability and allocability of the charges anticipated and the compatibility of administrative activities with the approved State plan.

* * * * *

4. A new § 400.13 is added in Subpart B, to read as follows:

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately between its CMA grant, support services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated between the CMA grant, support services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met: (1) The case management activities are targeted to time-eligible cash/medical assistance recipients for the purpose of assisting such recipients to obtain employment and to become economically self-sufficient; (2) such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service programs; and (3) such linkages include required reporting to the welfare agency when a refugee is offered a job, placed in a job, or fails to participate in the required employability services.

Subpart C—General Administration

5. A new paragraph (c) is added to existing section 400.27, to read as follows:

§ 400.27 Safeguarding and sharing of information.

* * * * *

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

6. Subpart E is revised and new Subparts F, G and I are added to read as follows:

Subpart E—Refugee Cash Assistance

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—

"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.52 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for cash assistance and determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with § 400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided either in cash or in kind, in considering income and resources of applicants under § 400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to refugee cash assistance. Similarly, to cite another example, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with § 400.60.

(b) *Cash assistance to the aged, blind, and disabled.* (1) *SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years old or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

Conditions of Eligibility for Refugee Cash Assistance

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immagination status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart; and

(4) Meet the requirements contained in Subpart F of this part for: Registration for and participation in employment services, including job search; acceptance of employment; and participation in employability service programs.

(5) Provide the name of the resettlement agency which resettled them.

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a) (3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of $30 plus one-third of the remainder of the earnings or the disregard of $30 set out in § 233.20(a)(11)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider the income and resources of a sponsor to be accessible to an applicant for or recipient of refugee cash assistance.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 223.20(a) (1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Filing unit.

(a) In a household which includes more than one applicant for or recipient of refugee cash assistance, the State agency must consider all such applicants or recipients as one filing unit.

(b) In a household which includes persons other than those who are

applicants for or recipients of refugee cash assistance, the State agency must, in determining eligibility for and amount of refugee cash assistance, take into consideration the needs, resources, and income (including counting as income any assistance received under other programs) of all persons residing in the household except that the amount of assistance provided to a refugee cash assistance recipient may not exceed the amount which would be payable if the needs, resources, and income (including counting as income any assistance received under other programs) of only the refugee cash assistance filing unit were considered.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC).
233.37 How monthly reports are treated and what notices are required (AFDC).
235.110 Fraud.

Subpart F—Requirements for Job Search, Employability Services, and Employment

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of job search and employment services intended to result in the earliest possible employment of the refugee. Such plan may also include other employability services provided at such times as not to interfere with job search or employment.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specifies in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, an applicant or recipient who is not exempt under section 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part, and must carry out a continuing program of job search, as described in § 400.80.

(2) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(3) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services and social services.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as

determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the 3-month period immediately following such month.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, carrying out a job search program, and acceptance of appropriate offers of employability services and employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable *applicant* may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81. This requirement applies regardless of whether the quitting or refusal occurred in the State of application or in another State.

(b) As a condition of continued receipt of refugee cash assistance, an employable *recipient* may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each applicant for or recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has not been developed by the resettlement agency which sponsored the refugee, or its designee, as part of its responsibility under section 412(b)(7)(D) of the Act, then the State agency, or its designee, must develop the employability plan.

(c) The employability plan must—

(1) Enable the individual to meet the job search requirements of § 400.80 of this part;

(2) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking; and

(3) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area.

Job Search Requirements

§ 400.80 Job search requirements.

(a) An employable applicant for or recipient of refugee cash assistance must carry out a continuing job search program beginning at the time he or she files an application for assistance.

(b) Such job search program shall, except as specified in paragraph (c) of this section, comprise at least 20 hours of employer contacts per week (including the time of travel required for such purpose). The State agency may express this requirement in terms of the number of employer contacts required.

(c) The amount of time required for the receipt of employment services, employability assessment, and on-the-job training, as described in paragraphs (a), (b), and (c) of § 400.154, may be substituted for the time required for employer contacts (or the number of such contacts required).

(d) The State agency must provide for methods to ensure that requirements for participation in job search are met, including procedures enabling it to verify participation in the program.

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the appropriate work and training criteria applied under the WIN program and contained in § 224.34 of this title, except that the reference to an "income disregard" in paragraph (b)(3) of § 224.34 is not applicable to refugee cash assistance and paragraph (b)(5)(iii) of § 224.34 does not apply.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, approved as part of the individual's employability plan by the State agency, or its designee, which does not exceed one year's duration (including any time enrolled in such program in the United States prior to the refugee's application for assistance), which is specifically intended to assist the professional in becoming relicensed in his or her profession, and which, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless (1) such services are provided on evenings or weekends (i.e., outside normal working hours) or (2) the refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

(d) No employability service, as designated by § 400.154 of this part, may be scheduled or provided at such time as to interfere with a refugee's required job search activities, except for employment services, employability assessment services, and on-the-job training, as described in paragraphs (a), (b), and (c) of § 400.154.

Failure or Refusal To Carry Out Job Search or To Accept Employability Services or Employment

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of

refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to carry out job search, to participate in appropriate employability services, or to accept an appropriate offer of employment, the State agency, or its designee, must deregister the individual for 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant.* (1) *Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to carry out job search, to participate in appropriate employability services, or to accept an appropriate offer of employment, or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b) (2) and (3) of this section, with the month in which such failure or refusal occurred.

(2) *Notice of intended termination.* (i) Within two working days after determining that such failure or refusal has occurred, the State agency must mail to the registrant by registered mail notice of intended termination.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.*

(i) The State must apply sanctions in accordance with paragraphs (1) through (3) of § 240.22(a) of this title.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 205.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

"Medically needy" means individuals who are eligible for medical assistance under Medicaid regulations at 42 CFR Part 435, Subpart D.

"Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands and Puerto Rico, 42 CFR 436.831).

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply to medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431, Subpart E.

(c) Nothwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine eligibility for refugee medical assistance.

Conditions of Eligibility for Refugee Medical Assistance

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a) (3) through (11) of this title, except as specified in § 400.61(a) of this part.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's refugee medical assistance eligibility shall be extended by a period of nine months or until the refugee reaches the end of his or her 18-month period in the United States, in accordance with § 400.100(b), whichever comes first.

Scope of Medical Services

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under § 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its medical assistance program, a State may provide a health assessment to a refugee, provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under § 400.94 or § 400.100 of this part.

Subpart I—Refugee Support Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee support services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee support services" means any title XX social services as defined below or any service set forth in § 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

Applications, Determinations of Eligibility, and Provision of Services

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee support services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

Funding and Service Priorities

§ 400.146 Use of funds.

A State must use at least 85 percent of its support service grants to provide employability services as set forth in § 400.154 of this subpart. A State may not use more than 15 percent of such grants to provide other services as set forth in § 400.155.

§ 400.147 Priority in provision of services.

(a) A State must plan its support service program and allocate its support service funds in such a manner that an appropriate portion of funds, based on population, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's application under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) A State may not provide services under this subpart (except for emergency services under § 400.155(c)(1) to refugees who have been in the United States for more than 36 months except to meet extreme and unusual needs to the extent that such needs, and the amount of funds proposed to address them, have been specified and justified as part of the State's application under § 400.11(b)(2) of Subpart B.

Purchase of Services

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

Conditions of Eligibility for Refugee Support Services

§ 400.150 General eligibility requirements.

Eligibility for refugee support services is limited to those refugees who—

(a) Meet immigration status and identification requirements is Subpart D of this part;

(b) Meet other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A statement may provide the support services defined in § 400.154 to

refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A state may provide the support services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

Scope of Refugee Support Services

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under the program.

§ 400.154 Employability services.

A State may provide the following employability services, for which at least 85 percent of a State's support service funds must be used—

(a) *Employment services,* including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search,and job placement and followup.

(b) *Employability assessment services,* including aptitude and skills testing.

(c) *On-the job training,* when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer providing the training.

(d) *English language instruction,* with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training,* including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification,* when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care,* when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation,* when necessary for participation in an employability service.

(i) *Translation and interpreter services,* when necessary in connection with employment or participation in an employability service.

(j) *Case management services,* as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

Note.—Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case management services to its CMA grant rather than its support services grant.)

S400.155 Other services.

A State may provide the following services, for which not more than 15 percent of a State's support service funds may be used—

(a) *Information and referral services.*

(b) *Outreach services,* including activities designed to familiarize refugees with available services.

(c) *Social adjustment services,* including:

(1) *Emergency services,* as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services,* as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services,* as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care,* when necessary for participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services,* which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) A State may not use its support service funds to provide orientation services which are designed to familiarize refugees with Western culture or to provide basic local orientation since this responsibility rests with the resettlement agency which sponsors a refugee.

(b) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(c) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency may be required to provide for a refugee whom it sponsors (e.g., development of an employability plan and monitoring of such plan) and not duplicate such services to such refugee.

9. Section 400.206 is added in Subpart J to read as follows:

§ 400.206 Federal funding for support services.

Federal funding is available for refugee support services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations determined by the Director.

10. A new § 400.220 is added in Subpart J to read as follows:

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways:

(a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or

(b) On the basis of the actual date of arrival, in which case each month will be counted from that specific date.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: November 6, 1985.

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

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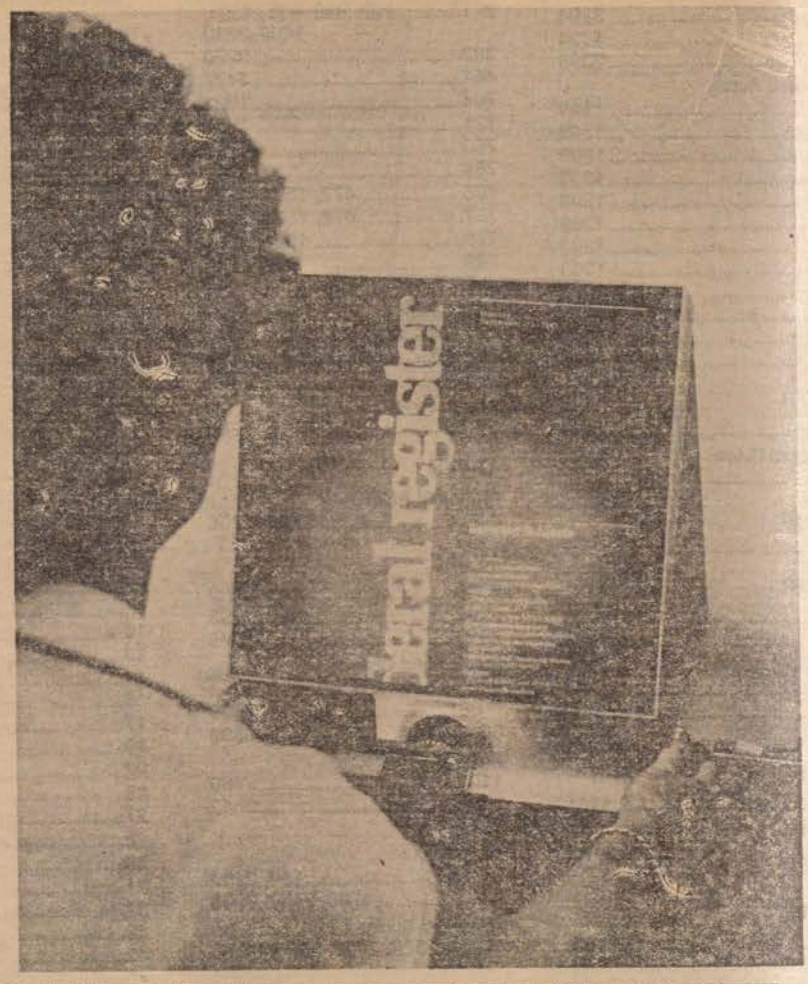

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