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Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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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 3 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.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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Presidential Documents

Title 3—

The President

Proclamation 5886 of October 21, 1988

National Chester F. Carlson Recognition Day, 1988

By the President of the United States of America

A Proclamation

Saturday, October 22, is the 50th anniversary of Chester F. Carlson's invention of xerographic printing, which has transformed our ability to copy documents quickly. By inventing and developing this process, Carlson did much to increase productivity and efficiency throughout society and to make information more readily available. The profound and enduring achievements of this second-generation American exemplify our national spirit of ingenuity and opportunity, and we can all gladly celebrate them.

Carlson studied physics and law and became fascinated with finding a solution to the need for speedy and inexpensive copies of information. He applied his knowledge of electrophotography to the challenge and created xerography. His genius sparked an indispensable industry in which American businesses, both large and small, are world leaders. This outstanding American inventor continued to serve his country and humanity by supporting and encouraging the activities of many colleges and universities, charities, and causes through the years.

The United States Postal Service is issuing a commemorative stamp in honor of Chester F. Carlson as part of the "Great American" series, and it is in the same spirit that all of us pause for a day of national recognition for him.

The Congress, by House Joint Resolution 629, has designated October 22, 1988, as "National Chester F. Carlson Recognition Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 22, 1988, as National Chester F. Carlson Recognition Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-24813
Filed 10-24-88: 10:43 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Tuesday, October 25, 1988

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule concerning the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave to Federal employees under 5 U.S.C. 6304. These regulations are being issued as part of a continuing effort to simplify and deregulate the Federal personnel system.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: James E. Matteson, (202) 632–5056.

SUPPLEMENTARY INFORMATION: On May 10, 1988, the Office of Personnel Management (OPM) published a proposed rule with request for comments in the **Federal Register** (53 FR 16554) in response to a recommendation by the Federal Personnel Director's Productivity Task Force. The purpose of the proposed rule was to simplify the process of determining when forfeited annual leave may be restored by permitting the head of an agency to designate the administrative level at which exigencies of the public business may be declared for this purpose.

The comment period on the proposed rule ended July 11, 1988. OPM received comments from one Federal agency and one Federal employee union. Both the agency and the union expressed support for the proposed regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM amends 5 CFR Part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.303 also issued under 5 U.S.C. 6133(a); 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–102 and 100–284.

2. Section 630.305 is revised to read as follows:

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[FR Doc. 88–24531 Filed 10–24–88; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 831 and 842

Retirement—Credit for Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations implementing section 110 of Pub. L. 100–238, enacted January 8, 1988, to provide qualifying employees and annuitants with an opportunity to credit certain service performed under the auspices of a personal service contract with a Federal agency.

DATES: Interim regulations are effective January 8, 1988. Comments must be received on or before December 27, 1988.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 632-4682.

SUPPLEMENTARY INFORMATION: On October 6, 1986, in the case of *Horner* v. *Acosta*, 803 F.2d 687, the United States Court of Appeals for the Federal Circuit ruled that service with the Federal Government without an appointment was not creditable under the Civil Service Retirement System (CSRS) (subchapter III of chapter 83 of title 5, United States Code).

The court further ruled that service under contract (contract service) was only creditable if the employing agency exercised an explicit statutory authority to make an appointment by contract. The definition of "employee" under the Federal Employees Retirement System (FERS) (chapter 84 of title 5, United States Code) incorporates through reference the CSRS definition of "employee"; accordingly, service with the Federal Government without an appointment is not creditable under FERS.

However, due to erroneous guidance in the Federal Personnel Manual, some agencies employed individuals under contract (without an appointment) with the expectation that the service would later be creditable for civil service retirement purposes. Section 110 of Pub. L. 100–238 was enacted as a means of crediting contract service under CSRS and FERS when the employing agency intended that the service be creditable for retirement purposes.

These interim regulations delete subparagraph (a)(5) of § 831.201, which erroneously implied that contract service with an agency that has no statutory authority to appoint by

contract is creditable service under CSRS and may be subject to retirement deductions. Also, these interim regulations provide instructions on how qualifying employees and annuitants may apply for CSRS or FERS credit under the authority of section 110 of Pub. L. 100–238.

Section Analysis

1. Sections 831.309(a) and 842.309(a). These paragraphs affirm the rule of law established by the Federal Circuit in *Acosta, supra,* that contract service with a Federal agency is only creditable for retirement purposes if the employing agency exercised an explicit statutory authority to appoint by contract.

2. Sections 831.309(b)(1) and 842.309(b)(1). These subparagraphs implement the basic provisions of section 110 of Pub. L. 100–238. Individuals who were either (i) employees covered by CSRS or FERS on January 8, 1988, (ii) CSRS annuitants who retired on an immediate or deferred annuity, the commencing date of which was after January 23, 1980 and before January 8, 1988, or (iii) survivor annuitants receiving annuity based on the death of a CSRS annuitant who retired after January 23, 1980 and before January 8, 1988, may receive retirement credit for services performed under a personal service contract before November 5, 1985. These classes of potential beneficiaries are specifically established by subsections (a)(1) and (b)(1)(B) of section 110. An employee, former employee, annuitant or survivor not explicitly included in the above-described classes is not entitled to retirement credit for service performed under a personal service contract.

The non-creditability of personal service contract service performed on or after November 5, 1985 is established by subsection (a)(1)(A) of section 110.

3. Sections 831.309(b)(2) and 842.309(b)(2). These subparagraphs reiterate the prohibitions to credit itemized in subsection (a)(3) of section 110. Service under these kinds of contracts cannot be credited for retirement purposes: contracts with the U.S. Agency for International Development after September 4, 1961; contracts with the Peace Corps; contracts where the individual's service may be terminated by a person other than the individual or the Government (this excludes employees of a Government contractor from receiving credit under section 110); contracts for a single transaction; and contracts under which services are paid for in a single payment.

4. Sections 831.309(c)(1) and 842.309(c)(1). These subparagraphs establish that each application for credit for contract service must be made on the designated form. CSRS applicants must use the Standard Form 2803. The Standard Form 2803, *Application to Make Deposit or Redeposit,* is the form uniformly used to make claim for service credit prior to retirement under CSRS. Due to its ready accessibility (the form is available at the personnel offices of Federal agencies around the world), OPM has chosen to utilize the form for claims under section 110, also. FERS applicants must use Standard Form 3108, *Application to Make Service Credit Payment for Civilian Service,* which is the FERS equivalent to the Standard Form 2803. Applications must be filed on or before January 8, 1990. An application will not be accepted (for the purposes of further processing or tolling the 2-year statute of limitations established by Pub. L. 100–238) if it is not made on the designated form.

5. Sections 831.309(c)(2) and 842.309(c)(2). These subparagraphs specify where an application will be filed. An individual who was an employee on January 8, 1988 who wishes to apply for retirement service credit for service under a personal service contract must file the application with the agency with which (s)he is employed on the date (s)he applies. If (s)he is not employed by the Federal Government on the date (s)he applies, then the application must be filed with the Federal agency with which (s)he was last employed in a position covered by CSRS or FERS. The rationale for this requirement is that, considering the short 2-year period involved, the (last) employing agency is generally the authority most qualified to certify that the individual (applicant) was employed in a position covered by CSRS or FERS on January 8, 1988.

6. Section 831.309(c)(3). This subparagraph requires that an individual who was an annuitant retired under CSRS before January 8, 1988 and after January 23, 1980, and who wishes to apply for retirement service credit for service under a personal service contract, must file the application with OPM. The rationale for this requirement is that OPM, as the agency responsible for administering CSRS, is the agency most qualified to certify that the individual (applicant) was retired within the above-stated time period. A survivor annuitant receiving annuity based on the death of an annuitant described above must also apply to OPM.

7. Sections 831.309(c)(4) and 842.309(3). These subparagraphs specify the information the applicant will provide in connection with the application. The CSRS applicant will complete Part A of the Standard Form 2803. Part A requests the applicant to provide (1) identifying information, such as name(s), date of birth, social security number (when applicable), name and location of current (or last) employing agency, and title of current (last) position; (2) information (dates and location) regarding claimed personal service contract service; (3) address information; and (4) signature. The FERS applicant will complete Part A of the Standard Form 3108, which requests information similar to that requested by Part A of the Standard Form 2803. To constitute a valid claim, the information provided must sufficiently identify the individual and the service claimed.

8. Sections 831.309(d)(1) and 842.309(d)(1). These subparagraphs require the agency receiving the application, when such application is timely and correctly filed under the provisions of § 831.309(c) and § 842.309(c), to examine its records to determine whether the applicant meets the service or retirement requirements of § 831.309(b)(1) or § 842.309(b)(1). When the applicant does meet those requirements the agency will, for the CSRS applicant, complete Schedule 1 of Part B of the Standard Form 2803, or for the FERS applicant, items 1 through 3b of Part B of the Standard Form 3108. These portions of the forms request the agency to specify all periods of service covered by retirement deductons. For the purposes of an application under either § 831.309(c) or § 842.309(c), it will be sufficient for the agency to certify the period of employment (covering January 8, 1988) which establishes entitlement to apply for credit for contract service. When the CSRS applicant is an annuitant, and OPM is the appropriate receiving agency, OPM will enter into Schedule 1 the date the annuitant retired and the annuitant's claim number. If the receiving agency is also the agency with which contract service is claimed, the agency will then act in accordance with the procedures specified in § 831.309(d)(2) or § 842.309(d)(2). Otherwise, the receiving agency will forward the application to the agency with which contract service is claimed. When the employee or annuitant claims contract service with more than one agency, the receiving agency will forward a copy of the application to each agency with which contract service is claimed. In the case where the applicant does not meet the service or retirement requirements specified in § 831.309(b)(1) or § 842.309(b)(1) or has not filed within the time limit specified in § 831.309(c)(1) or § 842.309(c)(1), whichever is applicable, the receiving

agency will deny the application by a letter to the applicant's address as shown on the application, offering the applicant a right to reconsideration under 5 CFR 831.109 or 841.306. The application, with a copy of the denial letter, will be forwarded to OPM. The applicant will have 30 days to request reconsideration. The address for CSRS reconsideration requests is: Office of Personnel Management, Employee Service and Records Center, Reconsideration Staff—Contract Service, P.O. Box 107, Boyers, Pennsylvania 16020.

The address for FERS reconsideration requests is: Office of Personnel Management, Federal Employees Retirement System, P.O. Box 884, Washington, DC 20044.

9. Sections 831.309(d)(2) and 842.309(d)(2). These subparagraphs describe the procedures which the agency with which personal service contract service is claimed will follow in certifying the creditability of the contract service claimed.

Clauses (i) of each subparagraph specify that the head of the agency, or his or her designee, will examine the agency's records and the applicant's submissions to determine, first, the beginning and ending dates of the period(s) of contract service claimed, and the rates of pay, and second, whether the agency intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code. The head of the agency will then certify his or her findings to OPM and provide the applicant with a copy of certification.

Clauses (ii) of each subparagraph specify the language to be used in an affirmative certification; clauses (iii) of each subparagraph the language of a negative certification. The phraseology comes directly from section 110 of Pub. L. 100–238, as does the authority of the head of the agency to make such certification. Since OPM cannot question the certification of the head of the agency, it would be inappropriate for OPM to attempt to paraphrase the language or define its meaning. The certification authority cannot be delegated to a lower-level agency official.

Clauses (iv) of each subparagraph authorize the Associate Director for Retirement and Insurance, OPM, to act as head of the agency when the agency with which contract service is claimed has been abolished or otherwise does not exist. This will provide an opportunity for individuals who claim contract service with extinct agencies to receive credit for such service. The same procedure will be followed with regard to claims for contract service on the staff of a former President of the United States.

Clauses (v) of each subparagraph exclude from judicial or administrative review the decision of the head of the agency whether or not to affirmatively certify an applicant's contract service as creditable. This merely reiterates the statutory provision contained in subsection (a)(2)(B) of section 110 of Pub. L. 100–238.

10. Sections 831.309(e)(1) and 842.309(e)(1). These subparagraphs authorize OPM, once an application properly and affirmatively certified under the provisions of § 831.309(d) (1) and (2), or § 842.309(d) (1) and (2), is received by OPM, to notify the applicant of the amount of deposit due for the contract service certified as creditable.

The amount of the deposit for contract service creditable as CSRS service will be computed in accordance with the provisions of section 8334(c) of title 5, United States Code, as specified by paragraph (a)(1) of section 110 of Pub. L. 100–238. Interest will be computed on the deposit in accordance with section 8334(e) of title 5, United States Code. In relation to deposits for periods of contract service prior to October 1, 1982, this means the provisions of section 8334(e) which were superseded by the language of Pub. L. 97–253, enacted September 8, 1982, and which provided for interest accrual at the rate of 4 percent per annum prior to January 1, 1948, and 3 percent per annum thereafter, will apply. Under the provisions of section 110, deposit must be made for each period of contract service before it can be credited in the computation of annuity.

The amount of the deposit for contract service creditable as FERS service will be computed in accordance with 5 CFR 842.305. The deposit will be billed at 1.3 percent of the pay contract service, plus interest.

11. Sections 831.309(e)(2) and 842.309(e)(2). These subparagraphs specify the time limitations for payment of deposit when the applicant was an employee on January 8, 1988. Generally, a deposit must be paid in full to OPM prior to authorization of the "first regular monthly payment" on any claim for retirement or death benefits. "First regular monthly payment" is defined at 5 CFR 831.603 as "the first annuity check payable on a recurring basis after OPM has adjudicated the regular rate of annuity payable * * *." The purpose of this provision is to assure that retirement benefits are final when adjudicated. However, to assure that each applicant has ample opportunity to pay the deposit, deposits will also be timely if paid in full 60 days (90 days for individuals who reside outside the continental United States) from the date the applicant receives the notice of amount of deposit from OPM, even if this date is after the date the first regular monthly payment is authorized. Payments are considered paid when received by OPM.

12. Section 831.309(e)(3). This subparagraph specifies the time limit for payment of deposit when the applicant retired after January 23, 1980 and before January 8, 1988. Paragraph (b)(1) of section 110 of Pub. L. 100–238 requires that the deposit be paid within 2 years of the date of enactment, i.e., on or before January 8, 1990. However, since applications must also be accepted until the same date, it will be impossible to notify some individuals of the amount of the deposit until after the statutory deadline for payment. OPM cannot conclude that the Congress intended an individual's rights to expire because of an unavoidable administrative delay. In order to resolve this problem in an equitable manner, an applicant will be permitted to make the deposit on or before January 8, 1990 or on or before the date 60 days (90 days for applicants residing outside the continental United States) from the date OPM notifies the individual of the amount of deposit, whichever date is later.

13. Sections 831.309(e)(4) and 842.309(e)(3). These subparagraphs provide that an individual's right to credit contract service under paragraphs 831.309(b) or 842.309(b) expires if the deposit is not paid within the time limit specified in §§ 831.309(e)(2), 831.309(e)(3), or 842.309(e)(2), whichever applies.

14. Section 831.309(f). This paragraph provides that any increase in annuity (or survivor annuity) resulting from service credited under § 831.309(b) will be effective on the commencing date of annuity or February 1, 1988, whichever date is later. This is in accordance with paragraph (b)(2) of section 110 of Pub. L. 100–238.

15. Sections 831.309(g)(1) and 842.309(f)(1). These subparagraphs place the burden of proof on the applicant.

16. Sections 831.309(g)(2) and 842.309(f)(2). These subparagraphs clarify that the status of agency documents, and their releasability to the applicant or any other individual, is not affected by the enactment of Pub. L. 100–238 or the promulgation of these regulations. An agency's refusal to release a document or record because of privileged or exempt status, or an

agency's inability to produce a document because of routine disposal, does not create a presumption in favor of the individual in regards to the alleged contents of the document or record.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Publication of proposed rulemaking would be impractical. The provisions being implemented were effective January 8, 1988. These regulations are needed immediately to administer the new provisions.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees retirees and survivors.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement, Survivors.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, Title 5 of the Code of Federal Regulations is amended as set forth below:

PART 831—RETIREMENT

Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§ 831.201 Exclusions from retirement coverage.

2. Paragraph (a)(5) of § 831.201 is removed and paragraphs (a) (6) through (18) of § 831.201 are redesignated as (a) (5) through (17).

Subpart C—Credit for Service

3. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5. U.S.C. 8347.

4. Section 831.309 is added to read as follows:

§ 831.309 Contract service.

(a) *Generally.* Contract service with the United States will only be included in the computation of, or used to establish title to, an annuity under subchapter III of chapter 83 of title 5, United States Code, if the employing agency exercised an explicit statutory authority to appoint an individual into the civil service by contract.

(b) *Exception.* (1) Service performed for the United States under a personal service contract between the individual and an agency of the United States before November 5, 1985, by an individual who was an employee on January 8, 1988, and at that time subject to retirement deductions under subchapter III of chapter 83 of title 5, United States Code, and service under a personal service contract before November 5, 1985 by an individual who established title to and commenced receiving an annuity after January 23, 1980, and before January 9, 1988, shall be included in the computation of, and used to establish title to, an annuity under subchapter III of chapter 83 of title 5, United States Code, but only if all the conditions and requirements of paragraphs (c), (d) and (e) of this section are fulfilled.

(2) Paragraph (b)(1) of this section does not apply to service performed under—

(i) A contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961;

(ii) A contract entered into under section 10(a)(5) of the Peace Corps Act;

(iii) A contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

(iv) A contract for a single transaction or a contract under which services are paid for in a single payment.

(c) *Application.* (1) Credit for service under a personal service contract under paragraph (b)(1) of this section may not be allowed unless application for such service is made on a Standard Form 2803 and the application is received by the appropriate agency on or before January 8, 1990.

(2) An individual who was an employee on January 8, 1988, must make application to either the current employing agency or, in the case of a separated employee, the last employing agency.

(3) An individual who was retired prior to January 8, 1988, or an individual who is receiving a survivor annuity based on the death of an individual who retired prior to January 8, 1988, must make application to OPM.

(4) The applicant must complete Part A of Standard Form 2803, listing all contract service claimed.

(d) *Certification.* (1) When an application has been received on or before Janaury 8, 1990 by the agency designated to receive the application under paragraph (c) of this section, the receiving agency will examine its records to determine if the applicant meets the service or retirement requirements stated in paragraph (b)(1) of this section. If the applicant does not so qualify, or if the application has not been filed with the receiving agency within the time limits described in paragraph (c) of this section, the receiving agency will reject the application in a letter to the applicant and inform the applicant of the right to reconsideration by OPM under the provisions of § 831.109 of this part. An agency denial letter is deemed to be OPM's initial decision under the provisions of § 831.109 of this part. If the applicant does so qualify, and the application has been filed in a timely manner, the receiving agency will complete Schedule 1 of Part B of Standard Form 2803 and forward the Standard Form 2803 to the head of the agency with which service is claimed.

(2)(i) on receipt of the Standard Form 2803 from the receiving agency, the head of the agency with which contract service is claimed will review, or will cause to be reviewed, both the agency's records and the applicant's submissions, to determine the length and pay of the contract service claimed, and whether the agency had intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code, and will certify to OPM his or her findings on the above matters. The applicant will be provided with a copy of certification.

(ii) An affirmative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the personal service contract service of (Name of Applicant) from (Beginning Date of Contract Service) to (Ending Date of Contract Service) at a rate of pay of $ (U.S. Dollars) per (Time Period) [Show multiple dates and rates of pay when applicable] and conclude that (Name of Agency) intended through the contracts that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter

83 of title 5, United States Code, and that the service is not excluded from retirement credit under the provisions of 5 CFR 831.309(b)(2)."

(iii) A negative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the claimed personal service contract service of (Name of Applicant) from (Beginning Date of Claimed Service) to (Ending Date of Claimed Service) and CANNOT conclude that (Name of Agency) intended that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and/or conclude that the service is excluded from retirement credit unter the provisions of 5 CFR 831.309(b)(2)."

(iv) When the agency with which the applicant claims contract service has been abolished, or for some other reason does not exist, the Associate Director shall act in place of the head of the agency. When the service under contract claimed by the applicant was on the staff of a President of the United States whose term of office has since expired, the Associate Director shall act in place of the former President.

(v) A decision by the head of the agency with which contract service is claimed, or a decision of the Associate Director when acting as the agency head under paragraph (d)(2)(iv) of this section, concerning whether or not to make an affirmative certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

(e) *Deposit.* (1) On receipt of an application properly and affirmatively certified in accordance with the provisions of paragraph (d)(2) of this section, OPM shall notify the applicant of the amount of deposit due. The deposit will be computed in accordance with the provisions of 5 U.S.C. 8334(c).

(2) When the applicant was an employee on January 8, 1988, the full amount of the deposit must be received by OPM prior to authorization of the "first regular monthly payment" (as that term is defined at 5 CFR 831.603) payable on any claim for retirement or death benefits under subchapter III of chapter 83 of title 5, United States Code, or on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever is later.

(3) When the applicant was an annuitant on January 8, 1988, or an individual receiving a survivor annuity based on the death of an individual who was an annuitant on January 8, 1988, the deposit must be received by OPM on or before January 8, 1990, or on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever date is later.

(4) No service shall be credited under the provisions of paragraph (b) of this section unless the deposit is received by OPM within the time limits described in this paragraph.

(f) *Accrual of annuity.* An annuity increase based on service credited under this section begins to accrue on February 1, 1988, or on the commencing date of the annuity, whichever is later.

(g) *Burden of proof.* (1) The burden of proof to show entitlement to credit for service under this section lies with the applicant.

(2) No provision of this section imposes upon the United States, the head of any agency of the United States, any employee of the United States, or any person generally, an obligation to produce or release any document or record which is not otherwise subject to production or release, and the failure of the applicant to obtain access to any document or record does not create a presumption in favor of the applicant in regard to the alleged contents of the document or record.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart C—Credit for Service

5. The authority citation for Subpart C of Part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g).

6. Section 842.309 is added to read as follows:

§ 842.309 Contract service.

(a) *Generally.* Contract service with the United States will only be included in the computation of, or used to establish title to, an annuity under chapter 84 of title 5, United States Code, if the employing agency exercised an explicit statutory authority to appoint an individual into the civil service by contract.

(b) *Exception.* (1) Service performed for the United States under a personal service contract between the individual and an agency of the United States before November 5, 1985 by an individual who was an employee on January 8, 1988, and at that time subject to retirement deductions under either subchapter III of chapter 83 or chapter 84 of title 5, United States Code, shall be included in determining title to and in the computation of an annuity under Chapter 84 of title 5, United States Code, but only if all the conditions and requirements of paragraphs (c), (d) and (e) of this section are fulfilled.

(2) Paragraph (b)(1) of this section does not apply to service performed under—

(i) A contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961;

(ii) A contract entered into under section 10(a)(5) of the Peace Corps Act;

(iii) A contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

(iv) A contract for a single transaction or a contract under which services are paid for in a single payment.

(c) *Application.* (1) Credit for service under a personal service contract under paragraph (b)(1) of this section may not be allowed unless application for such service is made on a Standard Form 3108 and the application is received by the agency described in paragraph (c)(2) of this section on or before January 8, 1990.

(2) An individual must make application to either the current employing agency or, in the case of a separated employee, the last employing agency.

(3) The applicant must complete Part A of Standard Form 3108, listing all contract service claimed.

(d) *Certification.* (1) When an application has been received on or before January 8, 1990 by the agency designated to receive the application under paragraph (c)(2) of this section, the receiving agency will examine its records to determine if the applicant meets the service requirements stated in paragraph (b)(1) of this section. If the applicant does not so qualify, or if the application has not been filed with the receiving agency within the time limits described in paragraph (c) of this section, the receiving agency will reject the application in a letter to the applicant and inform the applicant of the right to reconsideration by OPM under the provisions of § 841.306 of Part 841. An agency denial letter is deemed to be OPM's initial decision under the provisions of § 841.306. If the applicant does so qualify, and the application has been filed in a timely manner, the receiving agency will complete items 1 through 3b of Part B of Standard Form

3108 and forward the Standard Form 3108 to the head of the agency with which service is claimed.

(2)(i) On receipt of the Standard Form 3108 from the receiving agency, the head of the agency with which contract service is claimed will reviewed, or will cause to be review, both the agency's records and the applicant's submissions, to determine the length and pay of the contract service claimed, and whether the agency had intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code, and will certify to OPM his or her findings on the above matters. The applicant will be provided with a copy of the certification.

(ii) An affirmative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the personal service contract service of (Name of Applicant) from (Beginning Date of Contract Service) to (Ending Date of Contract Service) at a rate of pay of $ (U.S. Dollars) per (Time Period) [Show multiple dates and rates of pay when applicable] and conclude that (Name of Agency) intended through the contracts that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and that the service is not excluded from retirement credit under the provisions of 5 CFR 842.309(b)(2)."

(iii) A negative certificate of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the claimed personal service contract service of (Name of Applicant) from (Beginning Date of Claimed Service) to (Ending Date of Claimed Service) and CANNOT conclude that (Name of Agency) intended that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and/or conclude that the service is excluded from retirement credit under the provisions of 5 CFR 842.309(b)(2)."

(iv) When the agency with which the applicant claims contract service has been abolished, or for some other reason does not exist, the Associate Director shall act in place of the head of the agency. When the service under contract claimed by the applicant was on the staff of a President of the United States whose term of office has since expired, the Associate Director shall act in place of the former President.

(v) A decision by the head of the agency with which contract service is claimed, or a decision of the Associate Director when acting as the agency head under paragraph (v)(2)(iv) of this section, concerning whether or not to make an affirmative certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

(e) *Deposit.* (1) On receipt of an application properly and affirmatively certified in accordance with the provisions of paragraph (d)(2) of this section, OPM shall notify the applicant of the amount of deposit due. If the service is credited as CSRS service, the deposit will be computed in accordance with the provisions of 5 U.S.C. 8334(c). If the service is credited as FERS service, the deposit will be computed in accordance with the provisions of 5 CFR 842.305(d).

(2) The full amount of the deposit must be received by OPM prior to authorization of the "first regular monthly payment" (as that term is defined at 5 CFR 831.603) payable on any claim for retirement or death benefits under chapter 84 of title 5, United States Code, or, on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever date is later.

(3) No service shall be credited under the provisions of paragraph (b) of this section unless the deposit is received by OPM within the time limits described in this paragraph.

(f) *Burden of proof.* (1) The burden of proof to show entitlement to credit for service under this section lies with the applicant.

(2) No provisions of this section imposes upon the United States, the head of any agency of the United States, any employee of the United States, or any person generally, an obligation to produce or release any document or record which is not otherwise subject to production or release, and the failure of the applicant to obtain access to any document or record does not create a presumption in favor of the applicant in regard to the alleged contents of the document or record.

[FR Doc. 88-24532 Filed 10-24-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Determination of the 1988 Fiscal Year Interest Rate on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1988 fiscal year interest rate determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank's Fiscal Year 1988 cost of money rate has been established at 5.00%. Except for loans approved from October 1, 1987 through December 21, 1987 where borrowers elected to remain at interest rates set at loan aproval, all loan advances made from December 22, 1987 through September 30, 1988 under Bank loans approved on or after October 1, 1987 shall bear interest at the rate of 5.00%.

The calculation of the Bank's cost of money rate for Fiscal Year 1988 is provided in Table 1. Since the calculated rate (4.98%) is less than the minimum rate allowed under 7 U.S.C. 948(b)(3)(A) the cost of money rate is set at the minimum rate of 5.00%. The methodology required to calculate the cost of money rate is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9550.

SUPPLEMENTARY INFORMATION: The cost of money rate methodology develops a weighted average rate for the Bank's cost of money by considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources. During Fiscal Year 1988, the Bank paid the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 8.5%.

The total amount received by the Bank in Fiscal Year 1988 from the issuances of Class A stock was $28,710,000. Total advances for the

purchase of Class B stock and cash purchases for Class B stock were $10,394,950. Rescissions of loan funds advanced for Class B stock amounted to $1,592,799. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $8,802,151 ($10,394,950—$1,592,799). The total amount received by the Bank in Fiscal Year 1988 from the issuance of Class C stock was $16,976.

The Bank did not issue debentures or any other obligations during Fiscal Year 1988. Subsequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of Fiscal Year 1988 loan advances over amounts received from issuance of Class A, B, and C stocks and debentures and other obligations amounted to $82,167,226. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost of money rates for fiscal year 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100–203, and are listed in 7 CFR 1610.10(c) and Table 2 herein.

Harold V. Hunter,

Governor.

October 20, 1988.

TABLE 1.—RURAL TELEPHONE BANK FY 1988 COST OF MONEY RATE

Source of bank funds	Amount	Cost rate	Amount X cost rate	(Amount X rate)/Advances (percent)
FY 1988 Issuance of Class A Stock	$28,710,000	2.00	$574,200	0.480
FY 1988 Issuance of Class B Stock	8,802,151	0.00		.000
FY 1988 Issuance of Class C Stock	16,976	8.50	1,443	.001
FY 1988 Issuance of Debentures and Other Obligations				.000
Excess of Total Advances Over 1988 Issuances	82,167,226	6.55	5,380,919	4.495
Total FY 1988 Advances	119,696,353			
Calculated Cost of Money Rate				4.98
Minimum Cost Rate Allowable				5.00

TABLE 2.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances X Cost rate	(Advances X Cost rate)/Total advances (percent)
1974	5.01	$111,022,574	$5,562,231	0.36
1975	5.85	130,663,197	7,643,797	.50
1976	5.33	99,915,066	5,325,473	.35
1977	5.00	80,907,425	4,045,371	.26
1978	5.87	142,297,190	8,352,845	.54
1979	5.93	130,540,067	7,741,026	.50
1980	8.10	199,944,235	16,195,483	.05
1981	9.46	148,599,372	14,057,501	.91
1982	8.39	112,232,127	9,416,275	.61
1983	6.99	93,402,836	6,528,858	.42
1984	6.55	90,450,549	5,924,511	.39
1985	5.00	72,583,394	3,629,170	.24
1986	5.00	71,852,383	3,592,619	.23
1987	5.00	51,974,938	2,598,747	.17
Total Advances		1,536,385,353		
Cost of Money Rate				6.55

[FR Doc. 88–24656 Filed 10–24–88; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Announcements of Inspectors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to ensure that the presence of NRC inspectors on nuclear power reactor sites is not widely communicated or broadcast to licensee and contractor personnel without the expressed request to do so by the inspector. This change will allow the NRC inspectors, badged at the facility, to observe ongoing activities as they are being performed without advanced notification of the inspection to licensee and contractor

personnel. There is a need for this change because of the possible altering of attention and performance levels of a licensee and/or its contractors when the licensee is aware of NRC surveillance. Past occurrences where site and/or contractor personnel have been notified of NRC's presence on site have heightened concern in this area.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: George Barber, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1234.

SUPPLEMENTARY INFORMATION:

I. Background

By clarifying the meaning and intent of 10 CFR 50.70(b)(3), this final rule should ensure that NRC inspectors will be granted immediate and unannounced access to licensee facilities so as to provide the inspector with unfettered access equivalent to that provided a regular plant employee following proper identification and compliance with applicable access control procedures. This rule provides that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of an NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities that compromised the ability of properly badged NRC inspectors to inspect and access, on an unannounced basis, activities related to the license or construction permit when licensee employees or contractor employees informed others at the facility of the presence of the NRC inspectors. This change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate, unescorted access to ongoing activities as these activities are being performed without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors would not be on site.

II. Summary of Comments

On March 18, 1988, the Commission published in the **Federal Register** (53 FR 8924) a notice of proposed rulemaking on "Licensee Announcement of Inspectors." The Commission invited the public to comment on the proposed rule and received six letters of comment by April 18, 1988 (the specified closing date for public comments). After April 18, 1988, 26 additional letters of comments were received. All 32 letters of comments were considered in NRC's review of this final rule. The comments are discussed below.

Comment. A majority of the commenters believed the rule was unnecessary and characterized it as being too broad and vague. They asserted that it: was redundant with current regulations; would lead to unfair and impractical enforcement; be impossible to implement; inhibit inspector assistance by plant personnel; limit the ability of facility management to perform their safety functions; promote lying among the facility staff; require formal training and recordkeeping; and indicates a distrust of licensees.

NRC Response. NRC does not agree with the comments, but to ensure that the intent of the rule is clear and focused, adds the following clarification of the rule. The intent of this rule is to prevent site and contractor personnel from widespread dissemination or broadcasting the presence of an NRC inspector. Broadcasting, as used here, is defined as unsolicited one-way communications. Implementing or enforcing this rule should be no more difficult than implementing or enforcing any rule that involves personnel performance.

Adopting this rule does not indicate a predisposition on the part of the NRC that licensees are not acting properly. It is human nature for an individual to be more conscious of his or her performance when the individual realizes he or she is being observed. The NRC inspection program evaluates licensee performance on the basis of a sampling of its activities. It is critical that the sampling portion of the licensee's activities that are relied upon for this evaluation be representative of its overall activities. Therefore, the rule is more prophylactic than proscriptive, although it does carry enforcement sanctions should it be violated. Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action for significant intentional violations of the rule. An honest response by an employee to an innocent inquiry that he/she just saw an NRC inspector is not within the proscriptive perimeter of the rule. Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector. Based on this discussion, formalized training will not be necessary, and NRC Form 3 need not be modified to reflect this requirement.

The NRC does not agree that this rule will prevent management from performing its safety functions. It should be noted the rule does not affect software security systems which monitor the presence of persons in certain areas. Such systems should provide the licensee with needed information on space occupancy in the case of an emergency or evacuation. For those licensees who have these systems in place, or will put them in place, the rule does not affect such systems. If a licensee were, however, to design or modify these systems (or use them) for the purpose of monitoring the NRC inspector's movements in order to alert other plant personnel of the inspector's whereabouts, those actions would violate the rule.

In sum, the licensee is prohibited from taking affirmative action which would compromise the NRC inspector's mission of gaining unfettered access to the plant and its various areas of interest to the inspector.

Comment. Some commenters expressed a concern that the rule could raise Constitutional questions under the First and Fourth Amendments.

NRC Response. As discussed above, the purpose of the rule is to enhance the credibility of the inspection process. Inspections are specifically authorized under section 161o of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(o). The regulation is narrowly drawn to achieve a legitimate governmental interest (effective NRC inspections) without infringing on an individual's right to express ideas and opinions on any subject. Thus, the regulation does not impermissively intrude upon freedom of speech protected by the First Amendment to the Constitution.

The regulation does not raise any significant Fourth Amendment considerations. The Atomic Energy Act creates a pervasive regulatory scheme that puts licensees on clear notice that they will be subject to inspection, and the granting of a license is conditioned on consent to reasonable inspections. Thus, NRC inspections of licensees' premises, activities and records do not require a warrant under the Fourth Amendment. United States Nuclear Regulatory Commission vs Radiation Technology, Inc., 519 F. Supp. 1266, 1288–91 (D.N.J. 1981): Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB–527, 9 NRC 126, 139–41 (1979). The new regulation is a reasonable exercise of the Commission's inspection authority. Inspectors will continue to identify themselves and comply with other reasonable access control measures and, as always, inspections will be conducted for purposes authorized

under the Atomic Energy Act and the Energy Reorganization Act. The regulation does not run afoul of the Fourth Amendment to the Constitution.

Comment. A number of commenters suggested that the rule be implemented only by written request of the NRC inspector.

NRC Response. NRC rejects the suggestion. With this suggested modification, the rule would only apply to those individuals who had been given notice of the NRC inspector's presence on site. If implemented, this suggestion would defeat the intent of the rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this change is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

The final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

This final rule will have no significant impact on state and local governments and geographical regions. It may have a significant impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective inspections. The rule will make it clear that NRC inspectors are to have a realistic picture of the actual conditions at a site during the inspection process and, therefore, be better able to identify potentially dangerous conditions and/or practices for corrective action and to ensure that licensees comply with laws, regulations, and orders administered by the NRC. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule applies only to licensees authorized to construct or operate nuclear power reactors, who are not small business entities within the meaning of the act or implementing regulations. Therefore, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does apply to this final rule. The backfit analysis for announcement of inspectors rule in accordance with each of the factors specified in 10 CFR 50.109(a)(4)(ii)(c) is as follows:

(1) This rule provides that no means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of a NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector.

(2) The licensee will have to communicate the requirements of this rule to its personnel and to contractor personnel working at its site.

(3) The purpose of this rule is to enhance the credibility of the inspection process. By requiring that the presence of NRC inspectors (either resident or off site) is not announced, the NRC, public and licensees will have more confidence that the activities inspectors are witnessing are representative of licensee performance. Ensuring that NRC inspectors are witnessing representative licensee performance could substantially increase the likelihood that NRC inspectors will discover unsafe or potentially unsafe practices, bring about corrective actions and thereby lower the risk of accidents occurring which could lead to the accidental off-site release of radioactive material.

It is not possible, without before and after data, to quantitatively evaluate the benefits of implementing this rule. Still, a recent significant enforcement action concerning licensee employee's inattention to duty demonstrates the premise advanced in the above paragraph. In this enforcement action, over 30 licensee personnel, both management and staff were cited for inattention to duty. The primary concern was sleeping on watch. It is not difficult to envision accidents that could occur because of this type of licensee performance.

Coupling inattention to duty with equipment failure adds a new dimension to the risk of accidents occurring which could lead to the off-site release of radioactive material. In the enforcement action mentioned above, had the licensee announced the presence of the NRC inspector, the inattention to duty would have gone unnoticed. It should be noted that the licensee facility where this incident occurred did, on one past occasion, announce the presence of NRC inspectors.

(4) Not appropriate. There is no radiological exposure of faci'ity employees resulting from the rule's implementation.

(5) Very minor costs are associated with the rule's implementation. There are no training requirements or record keeping requirements associated with this rule. The only cost to the licensee would be communicating this rule to its employees and contractors.

(6) Not appropriate. There is no potential safety impact of changes in plant or operational complexity associated with this rule.

(7) Not appropriate. There is no resource burden on the NRC from the implementation of this rule.

(8) Not appropriate. There is no potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit.

(9) The proposed backfit is final.

Conclusion

Based on the above analysis, the Commission concludes that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from this backfit and that the direct and indirect costs of implementation for facilities are justified in view of this increased protection.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 8546).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131,

2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Section 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161(b), 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161(i), 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.70, paragraph (b)(4) is added to read as follows:

§ 50.70 Inspections.

* * * * *

(b) * * *

(4) The licensee or construction permit holder (nuclear power reactor only) shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested by the NRC inspector.

Dated at Rockville, MD, this 13th day of October, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–24609 Filed 10–24–88; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to the Regulatory Review program of NCUA, Part 704 (Corporate Credit Union) has been reviewed. The minor amendments to the section are primarily clarification language in three areas: (1) 704.2 includes a definition of "average daily assets" in the regulation, (2) 704.3 clarifies which items may be excluded from assets before the reserve transfer is computed, and (3) 704.5 specifies that the annual CPA audit be an opinion audit.

EFFECTIVE DATE: October 25, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Linda Groth, Corporate Credit Union Specialist at the above address or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of NCUA Rules and Regulations, Corporate Credit Unions, has been revised as a part of the Agency's continuing program of review of regulations and as a result of provisions in the Garn-St Germain Act which amended section 120(a) of the Federal Credit Union Act to permit the NCUA Board to differentiate the functions of corporate central Federal credit unions from natural person credit unions through the issuance of rules or orders of the Board. Part 704 was promulgated in 1977 to define a corporate credit union (herein referred to as a corporate) and to establish a reserve account for corporate credit unions. The regulation was revised in 1979 and again in 1984 to provide additional requirements pertaining to operations of corporate credit unions.

Public Comment

The NCUA Board issued a proposed rule on May 20, 1988 (see 53 FR 20122, (June 2, 1988)). The Board received 15 comments in response to the proposal to amend Part 704. Of the 15 comments, 7 were from Federally chartered corporates, 4 from state-chartered Federally insured corporates, 1 from a state-chartered non-insured corporate, 1 from a state credit union supervisor, 1 from a natural person Federal credit union and 1 from a trade association. A discussion of the comments received on the proposed amendments follows:

A. Proposal to Amend § 704.2 To Include a Definition of "Average Daily Assets" in the Regulation

Six of the commenters addressed the first proposal. Those who commented favored the change. The Board is adding paragraph (d) to § 704.2 to include the definition of average daily assets for reserve computation purposes in the regulation itself. Corporate credit unions may elect either of two methods of calculating average daily assets. This is not a new requirement. The definition was formerly included only in the preamble to the regulation.

B. Proposal To Amend § 704.3 To Clarify Items That May Be Excluded from the Assets Prior to the Reserve Transfer Computation

This section concerns establishment and maintenance of a corporate reserve against loan and certain investment losses. A total of 14 comments were received addressing this proposal. Eleven commenters concurred with the change in § 704.3 which clarifies the items that may be excluded from the assets prior to the reserve transfer computation.

Two commenters believe the exclusion of reverse repurchase transactions only through US Central Credit Union is too narrowly defined. One commenter stated that they are "extremely concerned as to the preferential status which this exemption grants to transactions through US Central Credit Union." Both agreed that reverse repurchase transactions through US Central should be excluded but that the regulation should be expanded to exclude other matched arbitrage transactions that inflate the balance sheet. One corporate urged NCUA to amend the regulations to exempt from the definition of assets, those assets involved in matched repurchase transactions with members of the corporate when the corporate executes the reverse repurchase transaction directly in the marketplace. This corporate also urged NCUA to reduce the corporate reserve burden by permitting a reduction in average daily assets as defined in the regulation by the amount of corporate-owned government securities involved in reverse repurchase transactions. The other corporate expressed the opinion that all matched reverse repurchase agreements with broker dealers "which have a primary dealer status with the Federal Reserve Board and are in compliance with the Federal Reserve's Capital Adequacy Guidelines for U.S. Government Security Dealers" be excluded from average daily assets when computing reserve requirements.

Reverse repurchase transactions on behalf of the members of a corporate using the US Central corporate network program have been given a previous exemption because the corporates act primarily in an administrative capacity to forward securities to US Central Credit Union; the principal risks and primary benefits are shared by US

Central Credit Union and the natural person credit unions. NCUA does not intend this specific exemption to become a precedent for all reverse repurchase transactions and believes that these financing arrangements can and do involve factors that should be subject to standard reserve requirements.

Two other concerns were mentioned regarding Section 704.3(b). The first is that all reserve levels stated in the regulation should be based on the total of the Corporate Reserve and all undivided earnings. Section 704.3(b) (1) and (2) both state that the reserve requirement is based upon the credit union's "Corporate Reserve and undivided earnings" as a percentage of assets. The other concern is that NCUA should place a cap on reserve transfers when the ratio of the Corporate Reserve and undivided earnings to assets is 4 percent. This is implied in the regulation because no transfer is required when the credit union's Corporate Reserve and undivided earnings is 4 percent or greater.

C. Proposal To Amend § 704.5 To Specify That the Annual CPA Audit Be an Opinion Audit

The NCUA Board's third proposed change was to Section 704.5 and was designed to clarify the intent of the required annual audit for corporate credit unions. All of the 8 commenters responding to this proposal favored the intent of the change although one commenter suggested that the wording could be clearer so as not to leave any question in the accounting profession concerning the requirement. That commenter suggested a minor change with wording specific to the accounting profession. While the suggested wording may have merit, the Board believes that the intent is clear with the wording of the proposed regulation.

One commenter elaborated on § 704.5 by suggesting that, since a CPA audit would allow NCUA to place a greater amount of reliance on the financial statements taken as a whole, a supervisory fee credit should be given for the cost of the certified audit, or a separate operating fee schedule should be developed for corporate credit unions which recognizes their role as "banker's banks". This section of the regulation does not cover the supervision fees charged to a credit union. While there may be some overlap in an audit and an examination, the purposes are clearly different. All Federal credit unions are required to have an annual audit in addition to the annual supervisory examination; one does not exclude or reduce the fee of the other.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because all corporate credit unions have assets of at least $1,000,000. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

Section 704.3 of the final regulation (corporate reserve requirements) is applicable to corporate Federally insured state chartered credit unions (Corporate FISCU's). This is not a new requirement. Corporate FISCU's must reserve according to § 704.3 only if their state law requires lower reserves or allows for charges to reserves other than loan and investment losses provided by § 704.3. NCUA has imposed this requirement on Corporate FISCU's as a condition of National Credit Union Share Insurance Fund Coverage. The Provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 704

Corporate Credit Unions.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA revises 12 CFR Part 704 as follows:

PART 704—CORPORATE CREDIT UNIONS

Sec.

704.1 Scope.
704.2 Definitions.
704.3 Corporate reserve.
704.4 Representation.
704.5 Annual audit.
704.6 Programs and services.
704.7 Prepayment penalties.

Authority: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

§ 704.1 Scope.

This part establishes certain special rules applying to Corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve—has applicability to both Corporate Federal credit unions and federally insured state-chartered corporate credit unions.

§ 704.2 Definitions.

(a) "Corporate Federal credit union" means a Federal credit union (1) that is operated primarily for the purpose of serving other credit unions and (2) whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares.

(b) For purposes of § 704.3, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

(c) "Undivided earnings" means all forms of retained earnings except Corporate Reserves (or regular or statutory reserves, as applicable) and, except for valuation allowances established to meet full and fair disclosure requirements of § 702.3.

(d) "Average daily assets" means the daily average of assets calculated on the basis of assets at the beginning and end of the period or, if available, on assets at the close of each day in the period.

§ 704.3 Corporate reserve.

(a) This section concerns the establishment and maintenance of a corporate reserve against loan losses and certain investment losses. For Corporate Federal credit unions, this section applies in lieu of § 702.2 of NCUA's regulations (12 CFR 702.2). For federally insured state-chartered corporate credit unions, this section applies to the extent that applicable State law and regulations (1) require the transfer of a lesser amount to reserves for loan and investment losses than this section or (2) allow charges to reserves for other than loan and investment losses as permitted by this section.

(b) At the end of each dividend cycle and prior to paying a dividend (or, at the option of the credit union, on a monthly basis if dividends are paid more frequently than monthly), sums shall be set aside in a Corporate Reserve in accordance with the following schedule: (1) When the credit union's Corporate Reserve and undivided earnings are less than 2 percent of assets, less Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit

union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. (2) When the Corporate Reserve and undivided earnings are equal to or greater than 2 percent but less than 4 percent of assets, less CLF stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(c) Charges may be made to the Corporate Reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. No other charges shall be made except as may be authorized in writing by the NCUA Board or its designee. Charges shall be made in accordance with full and fair disclosure requirements as described in the Accounting Manual for Federal Credit Unions.

§ 704.4 Representation.

An organizational member (i.e., a member other than a natural person) of a Corporate Federal credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same Corporate Federal credit union.

§ 704.5 Annual audit.

(a) The supervisory committee of a Corporate Federal credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§ 704.6 Programs and services.

Pursuant to section 120(a) of the Federal Credit Union Act (12 U.S.C 1766(a)), and subject to other applicable provisions of law, regulation, bylaws, and any order, of the NCUA Board, a Corporate Federal credit union may provide, to its members, services involving investments, liquidity management, payment systems and correspondent services.

§ 704.7 Prepayment Penalties.

If provided for in the loan contract, a Corporate Federal credit union is authorized to assess prepayment penalties on loans made at fixed rates and for specified maturities to member credit unions or other organizations.

[FR Doc. 88-24602 Filed 10-24-88; 8:45 am]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6804; 34-26191; 35-24729, IC-16599; FR-33]

Public Availability of Correspondence About Accountants' Independence

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission announces its policy to make each letter requesting the staff's views on an accountant's independence together with the staff's response thereto available for public inspection and copying as soon as practical after the staff response is sent or given to the requesting party, unless confidential treatment is granted.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: John Riley or Robert Burns, (202) 272-2130, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission's Office of the Chief Accountant responds to requests for its views on whether particular relationships between a registrant and its affiliates and an accountant may prevent the accountant from being considered independent for the purpose of auditing financial statements filed with the Commission by such persons.

In Financial Reporting Release No. 4 ("FRR 4"),[1] it was announced that:

> The Commission has determined to make publicly available pursuant to 17 CFR 200.81 the letters that request its staff's views on the impact on accountants' independence of particular sets of circumstances and the staff's responses thereto. Letters of request dated after November 30, 1982, and the staff's responses thereto, will be included in a public file and will be available at the Commission's Public Reference Room for public inspection and copying 30 days after the staff has given or sent the response to the person requesting it. Any request that the public availability to the letters be delayed beyond the 30 day period must be made pursuant to 17 CFR 200.81(b).

Such a public file has been maintained in accordance with this policy.

At the time FRR 4 was issued, 17 CFR 200.81 provided by publication of certain interpretive and no-action letters 30 days after the staff's response was sent or given to the requesting party. The references to "30 days" in FRR 4 therefore were derived from, and consistent with, 17 CFR 200.81. This section, however, was amended recently to make no-action and certain interpretive letters available to the public as soon as practical after a staff response is sent or given to a requesting party.[2] The Commission intends to keep its policy concerning the release of independence letters consistent with the policy for the release of interpretive and no-action positions as expressed in 17 CFR 200.81. Accordingly, each letter requesting the staff's views on an accountant's independence together with the staff's response to such a request will be made available for public inspection and copying as soon as practical after the staff's response is sent or given to the requesting party, unless temporary confidential treatment has been granted.

As indicated in the above quote from FRR 4, requests for temporary confidential treatment for independence letters have been processed in accordance with the provisions of 17 CFR 200.81(b). This policy will be continued. Under the circumstances and conditions set forth in 17 CFR 200.81(b), as amended, confidential treatment therefore may be granted for this correspondence for a period of up to 120 days from the date the staff's response has been sent or given to the requesting party.[3]

By the Commission.

Jonathan G. Katz,

Secretary.

October 17, 1988.

[FR Doc. 88-24586 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Financial Reporting Release No. 4 (October 14, 1982) [47 FR 47237].

[2] Securities Act Release No. 6793 (August 19, 1988) [53 FR 32604]; Securities Act Release No. 6764 (April 7, 1988) [53 FR 12412].

[3] Securities Act Release No. 6764, *supra*.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 173

Competitive Information Certificate and Profit Reduction Clause

AGENCY: Office of the Under Secretary of Defense (Acquisition), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule establishes a Competitive Information Certificate and Profit Reduction Clause to be required in connection with competitively awarded new contracts when such additional protection for the Government is deemed prudent in light of the ongoing investigation of procurement practices known as Operation "Ill Wind." This rule requires contracting officers to obtain from certain prospective contractors a certification that the contractor has not improperly obtained certain sensitive information in connection with the contract award, and to include in contracts with such contractors a clause authorizing the Secretary of Defense to recoup or reduce their profit on the contract if the certification is later determined to be false or inaccurate, or upon conviction of an individual or entity of certain criminal offenses related to or in connection with award of the contract. This rule should enable the Government reasonably to ensure the integrity of future contract awards pending resolution of the "Ill Wind" investigation, and should provide the Government a range of post-award remedies adequate to assure protection of the national interest.

EFFECTIVE DATE: September 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Volkman, Director, Contract Policy Administration, Office of the Deputy Assistant Secretary of Defense (Procurement)/CPA, Pentagon, Room 3C838, Washington, DC 20301–5000, (202) 697–0895.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1988 the Under Secretary of Defense (Acquisition) and the General Counsel of the Department of Defense, who had been designated by the Secretary of Defense to coordinate Department of Defense activity related to operation "Ill Wind" issued a memorandum directing the implementation of procedures to identify and resolve potential problems prior to award of new contracts that could be affected by activity subject to the "Ill Wind" investigation. These procedures were published as an interim rule on July 29, 1988, at 53 FR 28636. Public comment was requested by August 29, 1988.

Response to Public Comments

The Department received comments on the proposed rule from seven individual defense contractors, three industry associations, and a professional association. The responses generally agreed with the need to ensure the highest standard of integrity and ethics in the procurement process. However, the majority of responses did not agree with either the proposed language of the application of the rule to the list of contractors.

The following summarizes the major comments and suggestions received and the Department's responses. The final rule reflects full consideration of all comments received.

General Comments

Several respondents asserted that publication of the list of suspect contractors and implementation of the interim rule without notice to affected companies and without an opportunity for a hearing constituted a denial of due process. The Department disagrees. The requirements of the interim rule were properly implemented pursuant to a determination by the Under Secretary of Defense (Acquisition) that urgent and compelling circumstances required prior to public notice and comment.

One respondent requested that the interim rule be modified to apply only to those companies found, after appropriate notice and hearing, to have violated applicable defense procurement laws or regulations. The Department considers that the final rule appropriately balances the need to protect the integrity of its procurement system with the legitimate interest of its contractors.

One respondent commented that the interim rule would place on a few contractors the almost impossible burden of policing Departmental decisions to disseminate information. The Department believes that contractors, as well as the Government, bear a responsibility to ensure that sensitive procurement information is not improperly obtained. The final rule is one initiative in what must be a joint effort. It defines specific categories of information which are readily identifiable, and is capable of implementation without undue administrative burden.

One respondent contended that the interim rule violates the Federal Acquisition Regulation in that bidders are entitled to be evaluated fairly and impartially and solely on the factors specified in the applicable solicitation, and that the rule imposes new and extra-legal considerations and obligations for award to listed contractors. The comment misperceives the nature of the rule. Improper receipt of sensitive procurement information, under existing law, may warrant disqualification of the contractor from further participation in the competitive process or other action by the Government. The Government has broad authority to ensure the integrity of the procurement process, and this authority amply warrants the inquiry required prior to award under the rule.

Section by Section Comments

Section 173.1 Scope.

List of Contractors From Whom Certification Is Required

Many of the respondents were concerned that the "List of Contractors From Whom Certification is Required," (herein referred to as "the List"), was compiled without adequate justification and with no clear standards for inclusion. Without such standards, a contractor would not be able to determine when and if it will be placed on the List and subject to the rule's requirements. The final rule adequately prescribes the standard for inclusion on the List. Moreover, contractors on the List are specifically notified of its requirements with respect to each solicitation or award to which the rule applies.

Several respondents also contended that publication of the List amounted to violation of the listed contractors' constitutional rights to be free of governmental defamation and stigmatization without due process of law. However, publication of the List serves only to notify contracting officers of the contractors who will be required to certify. It neither states nor implies any misconduct by the contractor in connection with the particular solicitation. Rather, the final rule represents the least restrictive alternative sufficient to satisfy the Department's compelling interest in assuring the integrity of procurements during the pendency of the "Ill Wind" investigation.

Another respondent contended that the listing presumed a finding of nonresponsibility which was arbitrary and capricious and a violation of the Administrative Procedures Act and the Fifth Amendment. This contention is simply erroneous. Listing requires only that a certificate be executed in

connection with certain contract awards, and is no bar to award of a contract.

Two respondents suggested that the certification requirement, if retained, be applicable to all DOD contractors in the interest of ensuring fairness and integrity in the contracting process and to place the same administrative burden on all prospective DOD contractors. Both the interim rule and final rule represent a narrowly tailored solution to assure the integrity of the procurement system during the ongoing "Ill Wind" investigation, and are correspondingly limited. Whether broader application of the rule's requirements would be appropriate or beneficial cannot yet be determined.

One respondent asked that guidance be included in the rule as to how a company can be removed from the List, such as by demonstrating its responsibility to conduct any competitive intelligence gathering activities in a lawful and ethical manner. The final rule precribes that a listed contractor may submit information in support of a request to remove the firm or specified component from the list.

One respondent contended that the rule amounted to a violation of the Competition in Contracting Act in that the sixteen listed contractors would be precluded from competing for future Government contracts given the burdensome nature of complying with the regulations. On the basis of experience under the interim rule, the agency finds no evidence to support this contention.

One respondent stated that since the rule applied to sixteen listed contractors only, it violated the bill of attainder clause of the Constitution. The agency finds this contention specious. Neither the interim nor the final rule impose punishment upon the listed contractors.

Application

Almost all respondents were concerned that the rule could be read to apply to all contract actions for more than $100,000 and requested that sole source procurements, contract modifications, and/or the exercise of options be specifically excluded from the requirement. The final rule applies only to competitively awarded new prime contracts for more than $100,000. It does not apply to subcontracts, or to noncompetitive contract actions.

Several respondents also requested guidance as to when the certificate would be required to be submitted, with one recommending that only offerors remaining within the competitive range be required to submit a certificate, and another recommending that the certificate be required as a responsibility matter, prior to award, so as not to enter into consideration as part of the source selection. The final rule prescribes that the Competitive Information Certificate, where required, be obtained prior to award. Whether it should be required prior to source selection will depend upon the circumstances of the individual procurement, and is left to the sound discretion of the contracting officer unless constrained by policy of the Military Department concerned. In any event, the requirement to provide a certificate is not an evaluation factor to be considered as part of the source selection.

One respondent requested that the regulation preclude applying the requirement to prior contracts. The final rule applies only to competitively awarded new contracts. Nothing in the final rule, however, affects the broad authority of the Government to inquire into the circumstances of an award when appropriate.

One respondent commented that the $100,000 threshold was too low given the administrative burden involved and suggested a threshold of $1 million. The agency believes that the final rule appropriately balances the need to ensure the integrity of procurements with the burden upon the affected contractors and the Government.

Subcontractor Certification

The final rule deletes the requirement to obtain certifications from subcontractors as a condition of Government consent to subcontracts with subcontractors identified on the list.

Section 173.2 Certificate of Contractor Business Integrity and Ethics.

The Certificate as a Whole

Several respondents commented that the certificate is superfluous in light of the existing statutory and regulatory provisions that already cover the illegal or improper conduct the Government seeks to prevent. However, the Department has determined that the certificate is necessary under the circumstances of the "Ill Wind" investigation to provide the Government reasonable assurance prior to award that certain contract awards are not tainted by improper receipt of sensitive procurement information.

One respondent requested that the regulations provide that information submitted pursuant to the certificate requirement, designated by the contractor to be confidential or proprietary, be treated as such. The Department determined that any such information so marked and submitted should be evaluated and safeguarded under existing law and regulation of general applicability.

Paragraph (a)(1)(i) of this section

One respondent stated that while the rule did not in specific terms require certificates from non-listed subcontractors, the necessity for a listed prime contractor to ensure that no source selection information had been obtained at any subcontract tier directly or indirectly practically mandates subcontractor certificates at present. One respondent recommended that DOD make clear that proper due diligence submission by a listed prime contractor under section 173.2(a)(3) need not include certifications by non-listed subcontractors. Although the interim and final rule require the contractor to disclose and describe the nature of its internal review when executing a Competitive Information Certificate, subcontractor certification is not required. The Department considers that listed contractors are in the best position to determine the level of assurance required as to the conduct of their subcontractors.

Paragraph (a)(1)(ii) of This Section

Most of the respondents contended that the certificate was unconstitutionally vague in the terms "source selection information", "officially made available by the contracting officer" or "information that was generally available to the public." Although the Department determined that these terms afforded reasonable notice to listed contractors, the final rule substitutes terms which will similarly protect the Government's interests and facilitate compliance.

Many respondents stated that the definition of "source selection information" included information that was readily available to DOD contractors, and bore no relation to existing law or DOD practice. The final rule clarifies the intent of the interim rule by requiring disclosure of information under circumstances where its receipt by the contractor was clearly improper under existing law and regulation.

One respondent objected to the fact that oral communication from the Government also had to be reported, as this unfairly made contractors responsible for the actions of the Government. The final rule retains the requirement that oral as well as written communications be disclosed, but

clarifies the intent of the interim rule so as to ensure fair notice to contractors of such communications which are subject to disclosure.

One respondent recommended that the definition of source selection information be clarified or restated to apply only to information obtained after that process had commenced and before award. The final rule clarifies the intent of the interim rule to apply to information obtained prior to award. The intent of the balance of this recommendation is accommodated by clarifications in the final rule of which information, if received, must be disclosed.

Several respondents objected to the interim rule on the ground that no regulation currently makes the contracting officer the sole channel for dissemination of information or says that the contracting officer may only provide information officially, and recommended that the language be rewritten to permit authorized representatives of the Government, or members of Congress or the judiciary to release information. The final rule generally does not require disclosure of information where its release by a Government employee would not violate law or regulation.

Several respondents also contended that subparagraph (a)(ii) of the interim rule would require disclosure of information DOD is routinely permitted to disseminate to contractors, such as classified and for official use only documents. The final rule exempts from disclosure such information if the contractor reasonably believes it was made generally available to prospective offerors.

Paragraph (a)(2) of this section

One respondent commented that the requirements of this part of the interim rule are nearly identical to the Certificate of Independent Pricing currently required under FAR sections 3.103–1 and 52.203–2 and that there is no rational basis for requiring additional certification from listed contractors. The Department disagrees. The Competitive Information Certificate as promulgated in the final rule retains this language. Although the substantive requirement is substantially similar to that of FAR sections 3.103–1 and 52.203–2, the final rule is different in that it requires the contractor to describe the internal review upon which the certification is based. This is necessary in order to provide reasonable assurance of the integrity of the procurement prior to award in the context of the ongoing "Ill Wind" investigation.

Two respondents asked for specific language in the regulation permitting joint ventures and teaming arrangements. Neither the interim nor the final rule is intended to alter the treatment of joint ventures and teaming arrangements under prior law and regulation, except to the extent that a listed contractor may, where appropriate, be required to comply with the final rule with respect to its participation in a joint venture or teaming arrangement.

Paragraph (a)(3) of this section

Two respondents complained that the requirement to describe the steps taken to make the certifications required in the earlier paragraphs was unnecessary, unduly burdensome and intrusive as it forced the contractor to disclose its internal methodologies and processes for reaching a decision, imposed unnecessary costs, record keeping and reporting requirements, and interfered with the contractor's attorney-client and work product privileges. The Department has retained this requirement in the final rule finding it necessary to provide the Government reasonable assurance of the integrity of procurements to which it applies prior to award, under the circumstances of the ongoing "Ill Wind" investigation.

Paragraph (d) of this section

One respondent claimed that the certification requirement fails to take into account the working realities of large businesses in that a corporate president could not have detailed knowledge of each and every contractual offer made to the Government. The final rule, like the interim rule, requires that the offeror certify upon information and belief, and describe the interim review upon which the certification is based. The Department considers that contractors must share in the burden of ensuring the integrity of the procurement process, and that they may reasonably be expected to maintain controls over market intelligence activities sufficient to enable a determination as to ability to comply with the final rule.

One respondent recommended that the regulation allow the most senior corporate official having responsibility over that part of the corporate organization engaged in making the offer execute the certification. The Department determined to continue the requirement that the Competitive Information Certificate be executed by the corporate president or his or her designee not more than one level below the corporate president. The agency considers that this allows appropriate delegation in most corporate organizations, while assuring that certification remains a responsibility of senior management.

Section 173.3 Profit Recapture Clause.

Many of the respondents contended that the profit recapture clause in the interim rule would impose a severe penalty on the listed contractors and was not a valid enforceable liquidated damages provision. The Department disagrees. The final rule provides for recoupment of the contractor's anticipated profits when a person or business entity is convicted of certain offenses in connection with or related to award of the contract, or when the Competitive Information Certificate executed prior to award is found to be materially incomplete or inaccurate. The final rule also permits the Secretary of Defense, or his designee, to reduce the contract price in certain circumstances by a lesser amount upon good cause shown. These provisions embody the common sense principle that a contractor should not profit from illegal or improper conduct committed on its behalf, and are not punitive.

Several respondents commented that the clause as written was fatally flawed in that it violated the constitutional principle of the separation of powers, as well as several provisions of the Constitution, among them the Ex Post Facto Clause; Due Process Clause; and the First Amendment. The agency considers these objections to be without merit.

Several respondents also commented that the clause was superfluous in that it is either cumulative to the sanctions Congress has already prescribed or sets forth new sanctions for conduct that may not be illegal. The Department disagrees. The interim and final rules provide the Government an additional remedy for misconduct which prevents profit from illegal or improper conduct, but enables the Government to obtain the benefit of contract performance.

Several respondents stated that the clause was beyond DOD authority to impose as it was not expressly sanctioned by authorizing statutes. The Department disagrees, and considers that both the interim and final rule in this regard are well within the broad authority of the Government to ensure the integrity of its procurements.

One respondent objected to the fact that profit recapture would be automatic upon conviction of one of the enumerated criminal offenses, with no opportunity to present objections either before or after the profit reduction is made. The clause set forth in the revised

rule makes clear that the contractor will have an opportunity to submit information and argue in opposition to a proposed reduction.

One respondent recommended that the rule be revised so that no penalty would be incurred after the Government has decided to make award following submittal of the certificate. The final rule clarifies the intent of the interim rule by authorizing profit recapture or reduction only upon conviction of certain offenses, or upon a finding that the Competitive Information Certificate submitted prior to award was materially false or inaccurate.

One respondent suggested that in the event of a material falsity in the certificate, the Government might in lieu of termination or cancellation of a contract reduce the contract price thereof by the amount of the Government's actual damages. The Department considered that such an approach would not sufficiently protect the Government's interests in situations where, despite the contractor's best knowledge and belief, the Competitive Information Certificate submitted prior to award is subsequently shown to have been materially inaccurate. The Department also considers that it is consistent with the rule's purpose to recover anticipated profit attributable to illegal or improper conduct, rather than requiring the Government to determine actual damages on a case-by-case basis. The final rule does afford contractors an opportunity to show good cause why the contract price should be reduced by less than the amount of anticipated profit where the Secretary of Defense has determined to recapture profit based upon material falsity or inaccuracy in the Competitive Information Certificate submitted prior to award.

Summary of the Final Rule

The Department believes the requirements set forth in the final rule are necessary, given the Department's continuing need to acquire supplies and services pending the outcome of the "Ill Wind" investigation. A properly completed Competitive Information Certificate should provide the Department with necessary documentation to determine whether certain contract awards were tainted by improper receipt of sensitive procurement information prior to award. If it is later determined, after award, that the certificate was materially false or inaccurate, or that various criminal statutes had been violated in connection with or related to the obtaining of the contract, the profit reduction clause will allow the Government to recoup any profit associated with the performance of the contract. Thus the final rule provides an equitable procedure minimally disruptive to the competitive process, yet which adequately protects the integrity of the Department's procurement system.

The intent of this rule is to minimize the disruption of the Department's competitive acquisition of supplies and services during the the "Ill Wind" investigation, while protecting the Government's compelling interest in the integrity of the procurement process. The Department believes that the final rule meets this objective.

Paperwork Reduction Act

The requirement for the certificate and any information required to be furnished in connection with the certificate relates to the ongoing investigation into the activities of certain Department employees, contractors, and consultants. The Department recognizes that these requirements may impose certain costs and an administrative burden on those offerors required to provide the certificate and any associated information. However, these requirements are necessary to ensure that the interests of the United States are protected in connection with the award of contracts that may be involved in the investigation. The investigation is a criminal investigation. As a result of this investigation, the Department of Defense has taken certain administrative actions and additional administrative actions are likely. Accordingly, as provided in section 3518 of Title 44, United States Code, the Paperwork Reduction Act does not apply to this requirement for the furnishing of information. An OMB control number is not necessary.

Regulatory Flexibility Act

The Regulatory Act, section 603 of Title 5 United States Code, is not applicable because this rule will not have significant economic impact on a substantial number of small entities. Only businesses who are listed are required to provide certification; none are small businesses. Any administrative burden associated with completing the documentation is necessary to protect the Government's compelling interest in the integrity of the procurement process.

List of Subjects in 32 CFR Part 173

Armed Forces; Government procurement.

Accordingly, 32 CFR Part 173 is revised as follows:

PART 173—COMPETITIVE INFORMATION CERTIFICATE AND PROFIT REDUCTION CLAUSE

Sec.

173.1 Scope.
173.2 Competitive Information Certification
173.3 Profit Reduction Clause.

Appendix—List of contractors from whom certification is required.

Authority: 10 U.S.C. 2202.

§ 173.1 Scope.

(a) The purpose of the Competitive Information Certificate is to provide the Contracting Officer sufficient information and assurance to support award of a contract in those circumstances where certification is required.

(b) Although a Competitive Information Certificate provides reasonable assurance to the Government, the possibility remains that even a diligent internal review by the contractor may fail to identify illegal or improper actions. The purpose of the Profit Reduction Clause is to ensure effective protection of the Government's interest in making contract awards when a Competitive Information Certification is required. The Profit Reduction Clause is required in all competitively awarded new contracts over $100,000 when a Competitive Information Certificate is required prior to award.

§ 172.3 Competitive Information Certification.

(a) The Competitive Information Certificate is required prior to award of all competitively awarded new contracts of a value exceeding $100,000 to contractors subject to the requirement.

(1) Corporate activities required to provide the Certificate are corporations or corporate divisions which have been the subject of search warrants, or as to which other official information indicates such certification should be required, and their subsidiaries and affiliates. A list of contractors from whom certification is required is maintained and published as required under authority of the Department of Defense Procurement Task Force.

(2) The requirement to provide the Certificate may be further limited to certain divisions or subsidiaries, contracts or programs upon the basis of official information, furnished by the contractor or otherwise, sufficient to establish to the satisfaction of the Department of Defense that the investigation is so limited. Such information may include copies of search warrants, subpoenas and

affidavits from corporate officials concerning the scope and conduct of the investigation. The sufficiency of such information is solely within the discretion of the Department of Defense.

(3) Contractors from whom certification in certain instances is required will be relieved of the certification requirement when the Department of Defense determines that information developed in the "Ill Wind" investigation has been resolved in such a manner that certification is no longer required to protect the interests of the Government.

(4) A Certificate will not be required prior to the exercise of options or noncompetitive award of contracts. This does not limit in any manner the Government's ability to inquire into, or require information concerning, the circumstances surrounding an underlying competitive award.

(b) With respect to information disclosed under paragraph (1) of the Certificate, the offeror must attach to the Certificate a written statement detailing what information was obtained, and how, when, and from whom it was obtained. This information shall be evaluated at the levels prescribed by the contracting component to determine whether award of the contract should be made to the offeror. If during this review it is determined that the offeror may have obtained an unfair competitive advantage from the information and that there is no other reason for denying award to the offeror, the reviewing authority shall consider whether action may be taken to neutralize the potential unfair competitive advantage. Any decision to deny award to an offeror based upon information disclosed in the Certificate shall be reviewed and approved by the Service Acquisition Executive.

(c) This certificate and any accompanying statements required, must be executed by the offeror's corporate president or his designee at no more than one level below the president's level.

(d) If a contractor from whom certification is required is uncertain as to whether competitive information otherwise required to be disclosed was generally available to offerors, the uncertainty should be resolved by disclosure.

(e) Contracting Officers may continue to accept Certificates of Business Ethics and Integrity complying with the Interim rule in lieu of Competitive Information Certificates.

(f) The Competitive Information Certificate shall be in the following form:

Competitive Information Certificate

(1) (Name of the offeror) certifies, to the best of its knowledge and belief, that

(i) With the exception of any information described in an attachment to this certificate, and any information the offeror reasonably believes was made generally available to prospective offerors, the offeror has not knowingly obtained, directly or indirectly from the Government, any written information or oral extract or account thereof relating to this solicitation which was

(A) Submitted to the Government by offerors or potential offerors in response to the Government's solicitation for bid or proposal;

(B) Marked by an offeror or potential offeror to indicate the information was submitted to the Government subject to an assertion of privilege against disclosure;

(C) Marked or otherwise identified by the Government pursuant to law or regulation as classified, source selection sensitive, or for official use only; or

(D) The disclosure of which to the offeror or potential offeror by a Government employee would, under the circumstances, otherwise violate law or regulation.

(ii) The offeror named above

(A) Determined the prices in its offer independently, without, for the purpose of restricting competition, any consultation, communications, or agreement, directly or indirectly, with any other offeror or competitor relating to (*1*) those prices, (*2*) the intention to submit an offer, or (*3*), the methods or factors used to calculate the prices offered;

(B) Has not knowingly disclosed the prices in its offer, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law;

(C) Has not attempted to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(iii) The offeror has attached an accurate description of the internal review forming the basis for the certifications provided herein.

Corporate President or Designee.

§ 173.3 Profit Reduction Clause.

The following profit reduction clause is required in all competitively awarded new contracts over $100,000 when a Competitive Information Certificate is required prior to award.

Profit Reduction for Illegal or Improper Activity

(a) The government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (b) of this section; if

(1) A person or business entity is convicted for violating 18 U.S.C. 201–224 (bribery, graft, and conflicts of interest), 18 U.S.C. 371 (conspiracy), 18 U.S.C. 641 (theft of public money, property, or records), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341 (fraud), 18 U.S.C. 1343 (fraud by wire) for any act in connection with or related to the obtaining of this contract; or

(2) The Secretary of Defense, or his designee, determines that the Competitive Information Certificate submitted by the offeror in connection with award of this contract

(i) Was materially false at the time it was filed, or

(ii) Notwithstanding the offeror's best knowledge and belief, was materially incomplete or inaccurate.

Prior to making such a determination, the Secretary or his designee, shall provide to the contractor a written statement of the action being considered and the basis therefor. The contractor shall have not less than 30 calendar days after receipt to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The Secretary or his designee may, upon good cause shown, determine to reduce the contract price by less than the amount of any profit determined under paragraph (b) of this section.

(b) The amount of anticipated profits referred to in § 173.3(a) shall be:

(1) In the case of a cost-plus-fixed-fee contract, the amount of the fee specified in the contract at the time of award;

(2) In the case of fixed-price-incentive-profit or cost-plus-incentive-fee contract, the amount of the target profit or fee specified in the contract at the time of award; or

(3) In the case of a firm-fixed-price contract, the amount of anticipated profit determined by the contracting officer, after notice to the contractor and opportunity to comment, from records or documents in existence prior to the date of the award of the contract.

(c) The rights and remedies of the government provided in this cluase shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Appendix—List of Contractors for Whom Certification Is Required

Armtec, Incorporated, 410 Highway 19 South, Palatka, FL 32077

Cubic Corporation, 9333 Balboa Avenue, San Diego, CA 92123 as to contracts originating in the following division:

Cubic Defense Systems, Incorporated, San Diego, CA
Executive Resource Associates, 2011 Crystal Drive, Suite 813, Arlington, VA 22202
Hazeltine Corporation, 500 Commack Road, Commack, NY 11725 and all divisions and subsidiaries as follows:
Hazeltine Corporation, Electro-Acoustic Division, 115 Bay State Drive, Braintree, MA 02184
Hazeltine Corporation, Government Systems & Products Division, Cuba Hill Road, Greenlawn, NY 11740
Hazeltine Research, Incorporated, 188 Industrial Drive, Elmhurst, IL 60126
Kane Paper Corporation, 2365 Milburn Avenue, Baldwin, NY 11510
Litton Data Systems, Incorporated, 8000 Woodley Ave., Van Nuys, CA 91408
Loral Defense Systems Akron, 1210 Massillon Rd., Akron, OH 44315
McDonnel Douglas Corporation, Banshee Rd., P.O. Box 516, St. Louis, MO 63166 as to contracts originating in the following division:
McDonnell Aircraft Company, St. Louis, MO
Northrop Corporation, Ventura Division, 1515 Rancho Conejo Boulevard, Newbury Park, CA 91320
Teledyne Electronics, 649 Lawrence Drive, Newbury Park, CA 91320
Unisys Corporation, One Unisys Place, Detroit, MI 48232, as to contracts originating in the following divisions or subsidiaries:
Unisys Corporation, Defense Systems Division, 3333 Pilot Knob Road, Eagan, MN
Unisys Corporation, Defense Systems Division, Neil Armstrong Boulevard, Eagan, MN
Unisys Shipboard & Ground Systems Group, Marquis Avenue, Great Neck, NY 11020
United Technologies Corporation, UT Bldg., Hartford, CT 06101 as to contracts originating in the following divisions or subsidiaries:
Norden Systems, Incorporated
Pratt & Whitney
Varian Associates, Incorporated, 611 Hansen Way, Palo Alto, CA as to contracts originating in the following division:
*Continental Electronics Manufacturing Company, Dallas, TX
Whittaker Corporation (Lee Telecommunications Corporation (LTC), Route 1, Farmington, AR 72730)
Zubier Enterprises, 6201 Pine Street, Harrisburg, PA.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

October 20, 1988.

[FR Doc. 88-24628 Filed 10-24-88; 8:45 am]

BILLING CODE 3810-01-M

*Firm suspended as of July 6, 1988.

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Decrease in Amount of Time VA Will Allow Loan Holder To Begin Terminating Defaulted Loans

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment; correction.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations to correct previously published information concerning regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: C.G. Verenes, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, 202-389-4244.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53 FR 4977-78), the Veterans Administration (VA) amended its loan guaranty regulations (38 CFR Part 36) to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA. In that final regulation, the first sentence in § 36.4319(f) was amended; however, the new text should have replaced the first two sentences in that paragraph. The VA hereby corrects that error.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Loan programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: October 18, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. The authority citation for §§ 36.4300 through 36.4375 continues to read:

Authority: Secs. 36.3400 through 36.4375 insured under 72 stat. 1114 (38 U.S.C. 210).

2. In § 36.4319, paragraph (f) is revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his or her option intervene in, or begin and prosecute to completion any action or proceeding, in his or her name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or properly taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the same of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

* * * * *

[FR Doc. 88-24554 Filed 10-24-88; 8:45 am]

BILLING CODE 8320-01-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 613

Administrative Regulations; Amendment of Privacy Act Regulations/Exemption of System of Records

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation (NSF) is amending 45 CFR 613.6(a) to apply exemption 5 U.S.C. 552a(k)(5) of the Privacy Act to investigatory material involving applicants for Federal contracts (including grants and cooperative agreements). In addition, the NSF is exempting a new Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is NSF-50, "Principal Investigator/ Proposal File and Associated Records."

It includes the investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. The exemption is needed to protect the identity of persons supplying evaluations of NSF applicants and their proposals. Notice of the amendment and exemption, inviting public comment, was published as a proposed rule in the **Federal Register** on July 14, 1988 (53 FR 26611). The one comment received is discussed below.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Assistant General Counsel, Office of General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202) 357–9435.

SUPPLEMENTARY INFORMATION: One comment was received in response to NSF's proposed rule amending the agency's Privacy Act regulations. It was filed by the Public Citizen Litigation Group (PCLG) on behalf of Public Citizen, a public interest organization concerned with the implementation of the Privacy Act, and Mr. Jon Kalb, an individual scientist.

PCLG suggests that some clarification of the proposed rule and preceding preamble is necessary. Specifically, PCLG asserts that NSF should summarize "the affirmative rights" that result from the creation of a new system of records, rather than emphasize the "narrow exemption created by the proposed rule" and applied to that system. The proposed rule, however, was never intended to describe the general rights and obligations of an individual or agency under the Privacy Act. The Privacy Act statute, OMB's Guidelines and Responsibilities set forth at 40 FR 28948 (1975), and NSF's own regulations detail those rights and obligations, and the new system of records was fully explained in a corresponding **Federal Register** notice. It would be superfluous to repeat or describe those rights or obligations here. Nor does the proposed rule "create" an exemption. It merely applies to a new system of records a specific exemption delineated in the Privacy Act.

PCLG also seeks some explanation regarding application of the exemption, since the exemption language does not specifically mention federal grants or awards. As acknowledged by PCLG, however, 5 U.S.C. 552a(k)(5) expressly allows agencies to exempt from disclosure "material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, [and] *Federal contracts* * * *." (emphasis added). This exemption is simply being applied to material used in the agency's evaluation of all of its Federal contracts, including grants and cooperative agreements entered into between the agency and applicants. There is nothing in the statutory language of the exemption or its legislative history which suggests that the Federal contracts entered into by NSF, including grants and cooperative agreements, are outside the scope of this exemption.

Finally, PCLG is concerned that a broad reading of the preamble and rule, as proposed, would allow the agency to withhold entire documents which contain the name of a confidential source, not just that portion of a document which identifies the confidential source. This concern is unfounded. As correctly noted by PCLG, the exemption applied in the proposed rule only allows the agency to withhold materials "to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence * * *" 5 U.S.C. 552a(k)(5). The exemption is specifically referenced in the rule itself and, given the express language of the exemption, we believe its limited application is self-evident. Nevertheless, we will reiterate below the preamble to this rule, noting that the exemption applies only to that portion of records which reveals the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements). Under the circumstances, therefore, no further revision to the language of the rule itself is necessary.

Section 613.6(a) of NSF's Privacy Act regulations, 45 CFR Part 613, presently exempts from disclosure any material which would identify persons supplying references for various types of NSF fellowships. This exemption, effective September 27, 1975, was necessary to maintain the confidentiality of fellowship references so that evaluations continue to be given with complete candor. For identical reasons NSF is applying the same exemption, 5 U.S.C. 552a(k)(5), to any material which would identify persons supplying evaluations of NSF applicants for Federal contracts (including grants and cooperative agreements) and their proposals. Only that portion of the material which reveals the identity of a source who furnished information to the Government under an express promise of confidentiality will be withheld pursuant to this exemption.

The new system of records subject to this exemption is NSF–50, "Principal Investigator/Proposal File and Associated Records." It contains the name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. The provision of the Privacy Act from which the system is to be exempted is 5 U.S.C. 552a(d). Notice of this system was published in the **Federal Register** on July 14, 1988 (53 FR 26691).

Under the criteria set forth in Executive Order No. 12291, this rule has been determined not to be a "major rule" requiring a regulatory impact analysis. In addition, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 45 CFR Part 613

Privacy.

Pursuant to the authority granted by 5 U.S.C. 552a(f), NSF is amending 45 CFR Part 613 by revising § 613.6(a) as set forth below.

Robert M. Anderson,

Deputy General Counsel.

Dated: October 20, 1980.

PART 613—[AMENDED]

1. The authority for Part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(f).

2. Section 613.6 is amended by revising paragraph (a) as follows:

§ 613.6 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements) contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System, (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO), and (3) Principal Investigator/Proposal File and Associated Records.

* * * * *

[FR Doc. 88–24679 Filed 10–24–88; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-459; RM-5738]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258C to Garapan, Saipan, at coordinates North Latitude 15-10-44 and East Longitude 145-45-00, as a third FM service at the request of Serafin M. Dela Cruz. With this action, this proceeding is terminated.

DATES: Effective December 2, 1988; the window period for filing applications on Channel 258C will open on December 5, 1988, and close on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-459, adopted September 14, 1988, and released October 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry Garapan, Saipan, Channel 258C is added.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24637 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

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

122 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: Section 702 of the Competitive Equality Banking Act of 1987 (CEBA) amended the Federal Credit Union (FCU) Act to give the NCUA Board the authority to set the maturity limits for second mortgage and home improvement loans to Federal credit union members at "up to 15 years or any longer term which the Board may allow." Prior to that, the limit was 15 years. The Board requests comment on whether it should grant FCUs the authority to establish maturity limits at a term longer than 15 years for second mortgage and home improvement loans, and if so, what maximum term of maturity should be set?

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW. Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, NCUA, Director, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357–1065 or Roy DeLoach, NCUA, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: Currently, § 701.21(f) of the National Credit Union Administration Rules and Regulations (12 CFR 701.21(f)) states that: "Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may make loans secured' by a residential dwelling which is the residence of the member-borrower 'and for a loan' to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower."

This regulatory provisions is based on section 107(5)(A)(ii) of the FCU Act (12 U.S.C. 1757(5)(A)(ii)), which until recently contained a 15-year limit. Section 702 of CEBA amended the FCU Act to allow the NCUA Board, by regulation, to authorize longer maturities. Congressional intent expressed in the legislative history to CEBA, was ([1987]) U.S. Code Cong. & Ad. News, 653–54):

> To help consumer/members with the dilemma that sometimes occurs at the term completion of a second mortgage or home improvement loan. Currently, because of market interest rate fluctations near the end of the loan, members are confronted with either a balloon payment or higher monthly payments in order to pay off the loan by the end of the current 15-year term. This section authorizes NCUA to extend the term of such loans to permit more level loan payouts.

The NCUA Board requests comment on whether it should exercise its regulatory authority to allow longer maturities on second mortgage and home improvement loans.

By the National Credit Union Administration Board on October 12, 1988.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–24604 Filed 10–24–88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration.

ACTION: Proposed revisions to regulation.

SUMMARY: The NCUA Board is proposing to revise § 701.36 (Federal Credit Union Ownership of Fixed Assets) of its Rules and Regulations. The proposal, which is intended to clarify the regulation and set forth its application to corporate credit unions, results from NCUA's policy to periodically review each of its regulations.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Gerald M. McClernon, Program Officer, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Section 701.36 of the NCUA Rules and Regulations currently requires any Federal credit union having aggregate assets of $1 million or more to obtain written approval of the NCUA when its total investment in fixed assets will exceed 5 percent of its shares and retained earnings. The rule requires those Federal credit unions to submit such reports and statements as may be required by the NCUA regional director in support of its request. The NCUA Board, in its recent review of the regulation, has determined minor adjustments are necessary to clarify the rule and is seeking comment on the adjustments and on the necessity of having the rule more reasonably apply to corporate Federal credit unions.

The following section by section analysis describes the proposed changes to the regulation. The NCUA Board requests comment on the proposed changes and any other suggested modifications to the regulation.

Section by Section Analysis

Proposed Section 701.36(a)

This section has not been modified and states that a Federal credit union's investment in fixed assets shall be limited as described in this chapter.

Section 701.36(b) Definitions

Paragraphs (1), (2), (3), (5), (6), (7), and (8) have not been changed. The term defined in those sections include premises, furniture, fixtures and equipment, the meaning of fixed assets, abandoned premises, immediate family members, shares, and senior management employees. Paragraph (4), which defines investments in fixed assets, is comprised of 5 sections of which (i), (ii) and (v) dealing with investment in real property intended for use as premises, leasehold improvement

on premises, and investment in furniture, fixtures and equipment have not been changed. Section (iii) has been changed to clarify that aggregate lease payments include payments on both capital leases and operating leases. Section (iv) has been changed to clarify that loans and investments in credit union service organizations holding fixed assets used by the Federal credit union are to be included in total fixed assets.

Section 701.36(c) Limitations for Investment in Fixed Assets

Paragraphs (1), (2), (3), and (4) have not been changed. These paragraphs specifiy Federal credit unions with assets of $1 million or more must obtain approval of NCUA prior to acquiring fixed assets, if the aggregate of all such investments exceeds 5 percent of shares and retained earnings. Reporting requirements for investments in fixed assets in excess of the specified limit, as well as limits for future acquisitions are outlined. The requirement for submission or requests to the NCUA regional office having jurisdiction as well as the requirement for the regional office to respond in writing and the timeliness of its action on the matter are outlined. Paragraph (5) has been deleted. This paragraph was outdated and applied to Federal credit unions with assets between $1 million and $2 million that had fixed assets in excess of 5 percent as of December 31, 1984, and firm commitments to acquire fixed assets. Time limits relative to those investments have long since elapsed.

In addition, the NCUA Board seeks commitment from the public concerning the applicability of this section to corporate Federal credit unions. The necessity for having this rule reasonably apply to corporate Federal credit unions has been voiced from many areas. Because of the magnitude and volatility of a corporate credit union's total shares and retained earnings, the rule, as it is applied, generates significant safety and soundness concerns. A more reasonable approach might be to relate a corporate Federal credit union's fixed asset acquisition to a more stable area than total shares and retained earnings. This issue is not addressed in the language of the proposed regulation, but will be included if public comment leads the NCUA Board to conclude that such a provision is necessary.

Section 701.36(d) Premises

No changes were made to this section. Paragraph (1) of this section deals with acquisition of real property for expansion and the fact that it must be at least partially utilized within 3 years unless otherwise approved by the Administration. Paragraph (2) deals with the disposition of "abandoned premises" and documentation of same.

Section 701.36(e) Prohibited Transactions

Paragraphs (2) and (3) of this section have not been changed and prohibit a Federal credit union, (except for a short term informal lease agreement with a maturity less than one year), from acquiring or leasing premises from an employee directly involved in investment in fixed assets unless the board determines the involvement does not present a conflict of interest. Furthermore, all transactions with business associates or family members not specifically prohibited by this subsection must be conducted at arms length and in the best interest of the credit union. Paragraph (1), which prohibits the foregoing with respect to directors, members of the credit committee, and members of the supervisory committee has been changed to delete the word "official" because it is a redundant term and includes all those previously mentioned.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to credit unions with assets of at least $1 million. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

The action being considered does not affect state regulation of state-chartered credit unions.

List of Subjects in 12 CFR Part 701

Credit union, Fixed assets.

By the National Credit Union Administeration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, the NCUA proposes to amend Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1796.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1961 and 42 U.S.C. 3601–3610.

2. Section 701.36 is proposed to be revised as follows:

§ 701.36 FCU ownership of fixed assets.

(a) A federal credit union's ownership in fixed assets shall be limited as described in this chapter.

(b) Definitions—As Used in This Section:

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means;

(i) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments pursuant to lease agreements for fixed assets;

(iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation, including any entity described in § 701.27, holding any fixed assets used by the federal credit union and any loans to such partnership or corporation; or

(v) Any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(6) Immediate family member means a spouse or other family members living in the same household.

(7) Shares mean all savings (regular shares, share drafts, share certificates, other savings) and retained earnings means regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.

(8) Senior management employee means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer Manager), any assistant chief executive

officers (e.g., Assistant President, Vice President or Assistant Treasurer Manager) and the chief financial officer (Comptroller).

(c) Investment in fixed assets. (1) No federal credit union with $1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of shares and retained earnings.

(2) A federal credit union shall submit such statement and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, and unless otherwise specified by the regional director, a federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the shares and retained earnings of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(d) Premises. (1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) Prohibited transactions. (1) With the exception of a short term informal lease agreement (maturity less than one year) no federal credit union may acquire or lease premises without the prior written approval of the Administration from any of the following:

(i) A director, member of the credit committee or supervisory committee, official, or senior management employee of the federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit union committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership in which any director, member of the credit union committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (e)(1) of this section also applies to any employee not otherwise covered if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (e) of this section must be conducted at arm's length and in the interest of the credit union.

[FR Doc. 88-24603 Filed 10-24-88; 8:45 am]
BILLING CODE 7535-01-M

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12 CFR Parts 701, 790, 792, and 796

Credit Unions

AGENCY: National Credit Union Administration ("NCUA")

ACTION: Proposed Amendments.

SUMMARY: Part 790 of NCUA's Rules and Regulations has, over the years, become a gathering place for regulations on NCUA internal procedures which do not fit neatly elsewhere. Moreover, the regulation has not kept pace with changes made in statutes underlying the subjects set forth—primarily the Freedom of Information Act and the Privacy Act—and in NCUA practice. The NCUA Board proposes to restructure the regulation to make it more easily comprehensible, and to update those portions which are no longer consistent with Federal law or NCUA practice.

DATE: Comments must be received by January 23, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street N.W., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION:

General

The NCUA Board, in accordance with its policy to review existing regulations every three years, has reviewed Part 790 of the NCUA Rules and Regulations ("Description of Office, Disclosure of Official Records, Availability of Information") and is proposing to restructure it into two separate Parts proposed Parts 790 and 792—and to make several amendments.

This restructuring will result in a more logical ordering of the regulations concerning NCUA operations and procedures. Proposed Part 790 contains information concerning NCUA organization and public requests for action by NCUA; current Part 791 contains the rules of NCUA Board procedure; and Proposed Part 792 contains provisions concerning requests for information under the Freedom of Information Act (proposed Subpart A), under the Privacy Act (proposed Subpart B), and by subpoena (proposed Subpart C), and concerning securities procedures to protect classified national security information. Current Part 792 ("Employee Responsibility and Conduct") is proposed to be redesignated as Part 796. The NCUA Board requests comment on the proposed restructuring of Part 790 and welcomes any further suggestions to clarify and simplify the regulation.

The title of Part 790 is changed in the proposed amendment. The current title of Part 790 is "Description of Office, Disclosure of Official Records, Availability of Information." It is proposed that the new title be "Description of NCUA; Requests for Agency Action" which matches the subjects covered. It is proposed that the title of Part 792 be "Requests for Information Under the Freedom of Information Act and the Privacy Act,

and by Subpoena; Security Procedures for Classified Information." The Board is proposing to use the titles of the Acts rather than citations to them to make it simpler to determine what is contained in various parts of the Regulations.

Section-by-Section Analysis

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

Section 790.1 Scope

This proposed section sets forth what is found in Part 790 of the regulations—the structural organization of the NCUA, and description of its offices and requests for Agency action.

Section 790.2 Central and Regional Organization and Applications

This section sets forth NCUA's organizational structure. The Freedom of Information Act ("FOIA") requires that a description of the agency's central and field organization be published in the **Federal Register.** *(See* section (a)(1)(A) of the FOIA, 5 U.S.C. 552(a)(1)(A).) This section was last amended in September, 1986. (*See* 51 FR 33588, September 22, 1986.)

Subsection 790.2(a)—General Organization—has not been materially changed.

Subsection 790.2(b)—Central Office—describes each of the offices within the Central Office. The parenthetical concerning the first two members of the NCUA Board in subsection 790.2(b)(1) is deleted as unnecessary. Subsections 790.2(b) (1)–(9) are substantially unchanged. Subsections 790.2(b) (10), (11), and (12) are new. They describe the Controller, Personnel, and Administrative Offices. The addition of these three subsections completes the description of NCUA's Central Office organization.

Subsection 790.2(c)—Regional Offices. Subsection 790.2(c)(1) sets forth a chart containing the addresses of each of the six NCUA Regional Offices and the states and territories within the jurisdiction of each of the Regional Offices. The Regional Office addresses have been updated in the proposed rule. Subsection 790.2(c)(2) describes the management of the Regional Offices. This description has been updated by the addition of a description of the associate regional director, a position added to the Regional Offices in 1987.

Subsections 790.2(d) (1)–(8) describe the NCUA Central Liquidity Facility ("CLF"). Subsection 790.2(d)(1) is entitled "General Organization." Three technical changes are made to this subsection. A citation of Pub. L. 95–630 is deleted as unnecessary. The citation in the United States Code for the Government Corporation Control Act is corrected. The term "central credit unions" is changed to "corporate credit unions" as that is the more appropriate term. Subsections 790.2(d)(2), (3), & (4) describe the Board of Directors, President, and Vice President for Credit of the CLF, respectively. These subsections are virtually unchanged. Subsection 790.2(d)(5) describes the CLF Vice President for Finance. The second sentence of the description states, in part, that this vice president directs CLF borrowings from the securities market. The CLF does not borrow from the securities market, hence, this reference has been deleted in the proposal. Subsection 790.2(d)(6) describing the CLF Treasurer is unchanged. Subsection 790.2(d)(7) describes the CLF Secretary (this position is filled by the Secretary of the NCUA Board). The last phrase of the second sentence stating the Secretary's duty of "maintaining all records of the Facility other than those of a financial nature" has been deleted since the Secretary does not carry out this function. Subsection 790.2(d)(8) ("Operational Assistance") has been deleted as redundant. This subsection repeats the portion of § 790.2(d)(1) that the Central and Regional Offices of the NCUA will provide services to the CLF on a cost reimbursable basis.

Section 790.3 Requests for Agency Action

Section 701.5 of the NCUA Regulations, entitled "Other Applications" describes how certain applications to the NCUA are made. In December of 1987, the NCUA Board proposed removing this section from the regulations. (*See* 52 FR 47014, Dec. 11, 1987.) The Board now believes that certain information in § 701.5 should remain in the Regulations. Section (a)(1)(A) of the FOIA (5 U.S.C. 552(a)(1)(A)) requires that agencies publish in the **Federal Register** the "methods whereby, the public may * * * make submittals or requests, or obtain decisions." The Board believes the information currently found in § 701.5 is more appropriate in Part 790 since Part 790 describes the offices to which requests for action should be sent. The Board has proposed to remove § 701.5 and to add a new § 790.3 containing some of the information currently found in § 701.5. The Board proposes to name this new section "Requests for Agency Action." Proposed § 790.3 also states that requests for which there is no form of application should be sent to the NCUA Office listed in this § 790.2 that could most appropriately respond. For most credit union requests, the most appropriate office will be the NCUA Regional Office where the credit union is located. When the appropriate Office cannot be determined, the request should be sent to NCUA's Office of Public and Congressional Affairs.

PART 792—PROCEDURES UNDER THE FREEDOM OF INFORMATION ACT, THE PRIVACY ACT, AND SUBPOENAS; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

Section 792.1 Scope

This proposed section sets forth what is found in Subpart A of Part 792 of the regulations—production and disclosure under the Freedom of Information Act.

Section 792.2 Information Made Available to the Public and Requests for Such Information

This section of the proposal combines current §§ 790.3 and 790.8. Current § 790.3 entitled "Information Made Available to the Public" was last revised in February, 1975. (*See* 40 FR 8538, February 28, 1975.) Current Section 790.8 is entitled "Requests for Information and Determinations" and was last revised in December, 1981. (*See* 46 FR 62835, December 29, 1981.) "Determinations" has been deleted from the title since information on determinations is not found in this section, but rather in proposed § 792.6 entitled "Agency Determination." Combining these two sections will eliminate some confusion. Most of the information contained in proposed § 792.2 comes directly from the FOIA. Several modifications are made in the proposal to make this section consistent with current NCUA procedures.

Subsection 792.2(a) sets forth types of information that agencies must make available to the public for inspection and copying under the FOIA. Included are agency opinions and orders, statements of policy and interpretation that are not published in the **Federal Register,** and agency manuals affecting members of the public. *See* section (a)(2) of the FOIA (5 U.S.C. 552(a)(2)). Two technical changes are made to this subsection: A reference to the FOIA is substituted for the reference to the Administrative Procedure Act ("APA") (the FOIA is part of the APA); and the reference to § 790.6 of the NCUA Regulations is corrected to read § 792.2(f).

Subsection 792.2(b) explains that, pursuant to the FOIA, the NCUA may delete details from the information made available under § 792.2(a) if an

unwarranted invasion of personal privacy would be prevented. *See* section (a)(2) of the FOIA (5 U.S.C. 552 (a)(2)). This section is unchanged in the proposal.

Subsection 792.2(c) sets forth the indices that the NCUA makes available to the public to identify publications, instructions, policy statements, the credit union directory, and information available under § 792.2(a). Such indices are required by the FOIA. *See* section (a)(2) of the FOIA (5 U.S.C. 552(a)(2)). Several technical changes are made to this subsection. The sentence referencing the NCUA Catalog is deleted since this catalog is no longer used. All NCUA publications, including manuals, booklets and the credit union directory, that are available to the public are now included on the NCUA Publications List. Documents listed on the Publications List are now only available from the NCUA; they are not available from the Government Printing Office. The appropriate changes have been made to the second sentence of this subsection. The fourth sentence of the current subsection states that: "Statements of policy are maintained in a "Directives Control Index." NCUA instructions, bulletins, certain internal manuals, and letters to credit unions are now included on the "Directives Control Index." The appropriate addition has been made to this sentence. The fifth sentence of the subsection ("A master list of Federal credit unions is maintained and available as provided in § 701.17.") has been deleted. All of the information contained in the master list is now available in NCUA's credit union directory. In addition, § 701.17 was deleted from the NCUA Regulations several years ago.

Subsection 792.2(d) sets forth when the materials referred to in subsection (a) may be relied upon. It repeats the requirements of the FOIA [*see* section (a)(2) (i) and (ii) of the FOIA [5 U.S.C. 552(a)(2) (i), (ii)], and is unchanged in this proposal.

Subsection 792.2(e) states that all other records that are not available under this section or published in the **Federal Register** shall be available for public disclosure for their cost unless exempted by the FOIA or other law. Such disclosure is required by section (a)(3) of the FOIA (5 U.S.C. 552(a)(3)). The FOIA exemptions are set forth in § 792.3 and the costs for records are set forth in § 792.5. Several technical changes are made to this subsection. The reference to the APA is changed to the FOIA and a reference to § 792.3 (the FOIA exemptions) is added. References to various sections of the regulation are corrected. Part of the second sentence of this subsection states that NCUA will make records available "to any person who agrees to pay the direct costs of searching and duplication as specified in * * *" The phrase "of searching and duplication" is deleted due to a change in the FOIA. According to the 1986 FOIA amendments and Office of Management and Budget guidelines, some requesters (commercial requesters) are charged for review of records as well as for search and duplication. Other requesters are given a certain amount of search time and duplication free of charge.

Additional requesters are not charged for search time and are given a certain amount of free duplication. The new fee schedule is fully explained in § 792.5.

Subsection 792.2(f) ("Information Centers") contains the information currently found in § 790.8(a). NCUA's Central Office and each of its Regional Offices serve as information centers.

Subsection 792.2(g) ("Methods of Request") contains much of the information currently found in § 790.8 (b) and (c). This section has been rewritten and divided into three paragraphs (§ 792.3(g) (1)–(3)) due to various changes in NCUA request procedures. Special reference to credit union master lists is no longer necessary since all of the information found in the master list now appears in the NCUA credit union directory. Description of the NCUA credit union directory is removed from this section and is now found in proposed § 792.2(c). The sentence referring to § 701.14 of the NCUA Rules and Regulations (current § 790.8(b)(3)) has been deleted since § 701.14 was deleted from the regulations several years ago.

Paragraph (g)(1) of § 792.2 states that requests for indices should be made to the NCUA's Office of Administration. The indices indicate how to obtain the documents listed therein. Paragraph (g)(2) of § 792.2 states that requests for all other records should be made to the appropriate Regional Office if one knows that the documents are located there. All other requests should be made to the FOIA Officer of the Office of Administration. Paragraph 792.3(g)(3) states that improperly addressed requests may defer the date from which time limitations described in § 792.6 will begin to run.

Section 792.3 Unpublished, Confidential and Privileged Information

This section was previously numbered 790.4. It lists and explains the exemptions from disclosure pursuant to the FOIA. It describes which records are not disclosed pursuant to such Act. The exemptions are found in Section (b) of the FOIA (5 U.S.C. 552(b)). This section was last revised in July of 1987 due to an amendment to Exemption 7 of the FOIA. *See* 52 FR 27985 (July 27, 1987). No significant changes are made to it in this proposed regulation.

Section 792.4 Release of Exempt Records

This section was previously numbered § 790.5. It was last revised in December, 1981. *See* 46 FR 62835 (December 29, 1981.) It addresses release of records exempt from disclosure under the FOIA. Disclosure is authorized in accordance with conditions set out under subsections 792.4(b) (1)–(3). Different conditions apply for release to credit unions, financial institutions, and state and Federal agencies (*see* § 792.4(b)(1)); to investigatory agencies (*see* § 792.4(b)(2)); and to other third parties (§ 792.4(b)(3)). This section remains virtually unchanged except for a deletion of a reference to §§ 790.3 and 790.4 in the first sentence of current § 790.5(a). These sections do not provide for exceptions to release of records.

Section 792.5 Fees for Document Search, Review, and Duplication; Waiver and Reduction of Fees

This section was previously numbered 790.7. It describes the charges for producing documents requested under the FOIA and any waivers to such charges. It was completely revised in July, 1987, due to the 1986 fee and fee waiver amendments to the FOIA and the 1987 fee guidelines issued by the Office of Management and Budget. *See* 5 U.S.C. 552(a)(4)(A); 52 FR 27985 (July 27, 1987). No significant changes are made to it in the proposal.

Section 792.6 Agency Determination

As noted above, the current § 790.8 ("Requests for Information and Determinations") has been combined with current § 790.3 in § 792.2 of this proposal. The numbering of current § 790.9 ("Agency Determination") is changed to § 792.6. This section was last revised in December, 1981. *See* 46 FR 62835 (December 29, 1981). The Section sets forth many of the requirements and conditions of the FOIA concerning NCUA's responding to FOIA requests and administrative and judicial appeals. *See* 5 U.S.C. 552(a) (4), (6)).

In current § 790.9(a)(1), the parenthetical reads "except legal public holidays." In current § 790.9(a)(2) the parenthetical reads "excepting Saturdays, Sundays, and legal public holidays." The language used in § 790.9(a)(2) comes directly from Section (a)(6)(A) of the FOIA (5 U.S.C.

552(a)(6)(A)). The proposal makes the two parentheticals consistent with the language in the FOIA.

The NCUA official who formerly made the decision on administrative appeals of FOIA denials was the Director of the Office of Administration. Since the Director is also the FOI Officer who makes many of the original FOIA request determinations, the Director no longer makes the decision on administrative appeal. The General Counsel now makes those decisions. In § 792.6(a)(1) and 792.6 (c)(3), the references to the "Office of Administration" have been changed to the "Office of General Counsel." In § 792.6(c)(2), the reference to the Director of the Office of Administration" is changed to the "General Counsel."

Two additional technical changes are made to this section. First, in § 792.6(a)(2), the sentence explaining that requesters have 30 days to make an administrative appeal is moved up to become the second sentence of the subsection. This reordering of sentences makes the subsection clearer. Lastly, in § 792.6(c)(1), the two references to § 790.6 are deleted. These references are in error.

Section 797.7—Confidential Commercial Information

On June 23, 1987, the President issued Executive Order No. 12600, 52 FR 23781 (June 25, 1987). Under the Executive Order, all agencies subject to the FOIA must establish designation and notification procedures to be used for submitters of confidential commercial information and FOIA requests made for such information. The order requires that the procedures shall be established by regulation, after notice and public comment. NCUA has followed notification procedures for several years, but the procedures have never been formally incorporated into the Regulations. Proposed § 792.7 implements Executive Order 12600 and, for the most part, current NCUA policy. It does not impose any new requirements on credit unions. It sets forth procedures that NCUA must follow in its FOIA program. The section is based on a similar provision issued by the Department of Justice. The following analysis describes what is covered by each subsection of proposed § 792.7. All of the subsections are required by the Executive Order.

Subsection 792.7(a) Scope—This subsection states that all confidential commercial information provided to NCUA by a submitter when requested under the FOIA shall be disclosed in accordance with § 792.7, that is, in accordance with Executive Order 12600.

Subsection 792.7(b) Definitions—"Confidential commercial information" and "submitter" are defined. The definitions are taken from the Executive Order and are self-explanatory.

Subsection 797.7(c) Designation of confidential commercial information—This subsection states that submitters of information shall designate what they believe to be confidential commercial information as defined by § 792.7(b)(1).

Subsection 792.7(d) Notice to submitters—This subsection requires that NCUA give submitters notice of FOIA requests for its information when either the submitter has designated it as confidential commercial information or NCUA believes the information should be treated as such.

Subsection 792.7(e) Opportunity to object to disclosure—This section requires that NCUA give submitters a reasonable time, after the notice NCUA provides under § 792.7(d), to object to disclosure.

Section 792.7(f) Notice of intent to disclose—This section requires that NCUA give submitters notice that information they have objected to under § 792.7(e) will be disclosed. This notice gives the submitters the opportunity to file a reverse FOIA suit to prevent NCUA's disclosure.

Section 792.7(g) Notice of FOIA lawsuit—This section requires NCUA to give submitters notice when a lawsuit compelling disclosure of confidential commercial information they have submitted is filed.

Section 792.7(h) Exceptions to notice requirements—This section states that NCUA need not follow the notice requirements of § 792.7(d) under certain conditions. These are self-explanatory.

Subpart B—The Privacy Act

As noted above, Subpart B of Part 792 implements the Privacy Act of 1974 (5 U.S.C. 552a). NCUA's current Privacy Act regulation is found in Part 790, Subpart B. This regulation was issued by NCUA in final form in September, 1975 (*see* 40 FR 46276 (October 6, 1975)). The Privacy Act provides requirements for disclosure when an agency keeps systems of records containing personal information on individuals that can be accessed by a name or other identifying particular. There are also specific requirements set forth for agency publication of its systems of records in the Federal Register. NCUA published an updated Notice of Systems of Records in the **Federal Register** on September 26, 1988 (*see* 53 FR 37360). This proposed rule does not make major substantive changes to the regulation. The regulation is clarified and updated so that it is consistent with the current Privacy Act.

Section 792.20 Scope

This proposed section contains the information currently found in § 790.20(a). Section 790.20 is entitled "Purpose and scope." The title of the proposed section is changed to make it consistent with other sections of this Part. In addition to several grammatical changes made to this section, the reference to the Public Law number of the Privacy Act has been deleted as unnecessary and the word "personal" has been added before the word "information" in the second sentence. Current § 790.20(b), which addresses Privacy Act training, has been moved out of the scope section to another section (*see* proposed § 792.38), as it is inappropriate in the scope section.

Section 792.21 Definitions

The definitions section was previously found in § 790.21. The definitions are all taken from Section (a) of the Privacy Act (5 U.S.C. 552a(a)). The definition of "statistical record" found in section (a)(6) of the Privacy Act is not currently in our Regulations. The term is used in § 790.28(e) of the current regulations (§ 792.28(e) of this proposed rule). We have added the definition of "statistical record" as subsection 792.21(f) of our proposal. The definitions of "Administration" and "Board" currently found in § 790.21 (a) and (b) are deleted from this Section as unnecessary as they are defined elsewhere in the Regulations.

Section 792.22 Procedures for requests pertaining to individual records in a system of records

Section (d)(1) of the Privacy Act (5 U.S.C. 552a(d)(1)) requires, in part, that individuals be permitted to gain access to records or information therein pertaining to them within a system of records. Section 792.22 (currently 790.22) implements this provision of the Privacy Act. This section is virtually unchanged in the proposal.

Section 792.23 Times, Places, and Requirements for Identification of Individuals Making Requests and Identification of Records Requested

Section (f) of the Privacy Act (5 U.S.C. 552a(f)) requires that agencies promulgate rules defining times, places, and requirements for identifying individuals requesting information from a system and procedures for disclosure of such information. Subsections 792.23(a), (c) and (e) (currently § 790.23 (a), (c) and (e)) implement this provision.

These subsections are substantively unchanged in the proposal. Section (d)(1) of the Privacy Act (5 U.S.C. 552a(d)(1)) permits an individual to have a person accompany him to review records requested if the requesting individual furnishes a written statement authorizing the accompanying person. Section 792.23(d) implements such provision and has not been changed in the proposal. Section (h) of the Privacy Act addresses rights of legal guardians. Section 792.23(b) implements this section and is substantively unchanged in the proposal.

Section 792.24 Notice of Existence of Records, Access Decisions and Disclosure of Requested Information; Time Limits

This section is currently found at 790.24. As noted above, Section (f) of the Privacy Act (5 U.S.C. 552a(f)) requires the agencies promulgate rules establishing procedures for disclosure of records. Subsections 792.24(a) and (b) implement this provision of the Privacy Act. The second sentence of current § 790.24(a) is deleted as unnecessary. The last sentence, which deals with appeals, has been moved to proposed § 792.27(f) as it seems to fit more appropriately there. Section 792.24(c) states that individuals will not be allowed access to information compiled in anticipation of a civil action or proceeding pursuant to § (d)(5) of the Privacy Act or exempt from disclosure pursuant to Sections (j) or (k) of the Privacy Act (5 U.S.C. 552a(d)(5)(j), (k)). This subsection is substantively unchanged in the proposal.

Section 792.25 Special Procedures: Information Furnished by Other Agencies; Medical Records

This Section is currently found at § 90.25. Section 792.25(a) sets forth procedures for occasions when an individual requests records that were furnished to the NCUA by other Federal agencies. This issue is not specifically addressed in the Privacy Act; however, the provision implements the general disclosure procedure section addressed in section (f)(3) of the Privacy Act (5 U.S.C. 552a(f)(3)). The same section of the Privacy Act states that special procedures can be required for the disclosure of medical records. This provision is implemented by Section 792.25(b). This Section is substantively unchanged in the proposal.

Section 792.26 Requests for Correction or Amendment to Record, Administrative Review of Requests

Section (d)(2) of the Privacy Act (5 U.S C. 552a(d)(2)) requires that agencies permit individuals to request amendment of records pertaining to them within certain time limitations. Section (f)(4) of the Privacy Act (5 U.S.C. 552a(f)(4)) requires agencies to promulgate rules establishing procedures for agencies to review requests to amend records. Section 792.26 (current § 790.26) implements these provisions. The second sentence of § 792.26(a) is deleted in the proposal as unnecessary. No other significant changes are made in this Section of the proposal.

Section 792.27 Appeal of Initial Adverse Determination

Section (f)(4) of the Privacy Act (5 U.S.C. 552(f)(4)) requires that an agency promulgate rules for appeal of an adverse agency determination on a request by an individual to amend that individual's record. Section (d)(3) of the Privacy Act (5 U.S.C. 552(d)(3)) requires that the agency permit an individual to file a concise statement setting forth the reasons for disagreement with the agency's adverse determination. Proposed § 792.27 (current § 790.27) implements these provisions of the Privacy Act. References to the Director of the Office of Administration and the Chairman have been changed to the General Counsel in this section as appeals of determinations will be made to the General Counsel, as is done in the case of appeals of FOIA determinations. Subsection (e) has been made a part of subsection (b). A new § 792.27(e) is added. This section addresses appeal of denial of access due to an exemption from the Privacy Act. This language currently appears in § 790.24(a) of the regulation. It fits more appropriately into this appeal section. Although there is no statutory right to an appeal within the Agency for denial of access due to an exemption, the appeal right has always been a part of NCUA's Privacy Act regulation.

Section 792.28 Disclosure of Records to Person Other Than the Individual to Whom It Pertains

This section sets forth when disclosures can be made without the prior consent of the individual to whom the information pertains. This section lists the information given in Section (b) of the Privacy Act (5 U.S.C. 552a(b)). Proposed § 792.28 (current § 790.28) has been updated to make it consistent with the current Privacy Act by making changes to § 792.28(f) concerning disclosure of records to the National Archives and by the addition of § 792.28(1) concerning disclosure of records to consumer reporting agencies.

Section 792.29 Accounting for Disclosure

Section (c) of the Privacy Act (5 U.S.C. 552a(c)) requires that agencies keep accountings of certain disclosures made. Proposed § 792.29 (current § 790.29) implements this requirement. The only change made is in proposed § 792.29(b) where "National Archives and Records Service" has been amended to read "National Archives and Records Administration." The Archives, which was previously part of the General Services Administration, is now a separate Agency.

Section 792.30 Requests for Accounting for Disclosures

Section (c) of the Privacy Act (5 U.S.C. 552a(c)) requires that agencies make accountings available to individuals named in the records disclosed at their request. Section 792.30 (current § 790.30) implements this provision. No changes are made to this section of the proposed regulation.

Proposed Deletion—Emergency Disclosures

Current Section 790.31 sets forth procedures for notification of individuals when records are disclosed under compelling circumstances affecting health or safety. Such disclosure is permitted pursuant to section (b)(8) of the Privacy Act (5 U.S.C. 552a(b)(8)) and is already addressed in proposed § 792.28(h) of this regulation. Section 792.28((h) requires, pursuant to the Privacy Act, that notification be transmitted to the last known address of the individual. The specific notification procedures set forth in § 790.31 are not required by the Privacy Act. Hence, this section is proposed to be deleted as repetitive.

Section 792.31 Collection of Information From Individuals; Information Forms

This section appears in the current regulation as § 790.32. Section (e) of the Privacy Act (5 U.S.C. 552a(e)) sets forth various requirements for agencies that maintain systems of records, including requirements that information collected be relevant to an agency function; that only certain records that describe an individual's exercise of rights guaranteed by the First Amendment can be maintained; and that certain disclosures be made to individuals supplying information. It requires further that agencies provide individuals supplying information with certain information on a separate form. These requirements are implemented by § 792.31(a), 792.31(b) (1)–(4), and

792.31(c). The last two sentences of § 790.32(c) are deleted in this proposal as no longer necessary. They deal with the timing of form revision and refer to distribution prior to September, 1975. A note to the Privacy Act (section 7 of Pub. L. 93–579) addresses an individual's disclosure of his social security number. Section 792.31(b)(5) implements this provision.

Section 792.32 Contracting for Operation of a System of Records

Section (m) of the Privacy Act (5 U.S.C. 552a(m)) allows an agency to contract out the operation of a system of records. It states that when the operation of a system is contracted out, the provisions of the Privacy Act continue to apply. Proposed § 792.32 (current § 790.33) implements this provision. The language in the proposed section is simplified.

Section 792.33 Fees

Section (f)(5) of the Privacy Act (5 U.S.C. 552a(f)(5)) allows an agency to establish fees to be charged to individuals for making copies of records, excluding cost of any search and review. Proposed § 792.33 (current § 790.34) implements this provision. The fee for copying one page is raised in the proposed section from $.10 to $.25 to reflect actual costs. The last phrase of § 790.34(a)(2) is deleted in the proposal. It states that individuals will be notified of all costs of copies in nondocument form (generally records from a computer source) before they are incurred. Section 790.34(b) requires that individuals be notified prior to fee charges of more than $25. Such notification seems sufficient for both document and nondocument copies.

Section 792.34—Exemptions

Sections (j) and (k) of the Privacy Act (5 U.S.C. 552a(j), (k)) authorize agencies to exempt certain systems of records from various provisions of the Privacy Act. Proposed § 792.34 (current § 790.35) implements this provision. Several changes are made in this proposed section to make it current with NCUA's recently-published Notice of Systems of Records. No substantive changes have been made in proposed § 792.34(a). Several grammatical changes are made to make this subsection easier to read. Subsection 792.34(b) lists the systems of records that are exempt. These systems are listed in § 790.35(b) and (c) of the current regulation. The current regulation lists the first exempt system as System NCUA–2. This system ("Employee Security Investigations Containing Adverse Information") is now System NCUA–1 and appears in proposed Section 792.34(b)(1). The second exempt system in the current regulation is System NCUA–17 ("Security Clearance Records Concerning NCUA Personnel Who Occupy Critical Sensitive Positions"). This system has not been maintained by the NCUA for the past several years. The information concerning it has been deleted in the proposed regulation. The third exempt system in the current regulation (§ 790.35(c)) is System NCUA–4 ("Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act"). This system is now System NCUA–15 and appears in § 792.34(b)(2). This system now includes information on violations of criminal statutes as well as the Federal Credit Union Act. The appropriate changes have been made in the proposed section. Proposed Section 792.34(c) (current § 790.35(d)) defines "confidential source." This definition is found in section (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)). It is unchanged in the proposal.

Section 792.35 Security of Systems of Records

Section (e)(10) of the Privacy Act (5 U.S.C. 552a(e)(10)) requires that agencies establish safeguards to insure the security and confidentiality of systems of records. Proposed § 792.35 (current § 790.36) implements this section of the Privacy Act. The only change made in the proposal is that the last sentence of § 790.36(a), requiring that automated systems comply with security standards promulgated by the National Bureau of Standards, has been deleted as unnecessary. Such standards are not required by the Privacy Act.

Section 792.36 Use and Collection of Social Security Numbers

As noted above under proposed § 792.31, the provisions concerning disclosure of social security numbers are found in a note to the Privacy Act (*see* section 7 of Pub. L. 93–579). This proposed section (and current § 790.37) ensure that NCUA employees are aware of the provisions in the note to the Privacy Act affecting disclosure of social security numbers. The only change made in this section of the proposal is a deletion of the examples of NCUA Office Directors.

Section 792.37 Training and Employee Standards of Conduct With Regard to Privacy

Section (e) of the Privacy Act (5 U.S.C. 552a(e)) sets forth agency requirements for systems of records, including training of agency employees, maintenance, and disclosure of records. Section (c) requires that agencies keep accountings of disclosures. Sections (g) and (i) of the Privacy Act set forth the civil and criminal remedies for Privacy Act violations, respectively. Section (q) of the Privacy Act addresses the interplay between the Privacy Act and the Freedom of Information Act ("FOIA"). This proposed section implements various provisions of sections (e), (c) and (q), and informs agency employees of sections (g) and (i). The word "training" has been added to the title of this proposed Section. As noted above under proposed § 792.20, the information in current § 790.20(a) is moved to this section and is renumbered as § 792.37(a). It states that the Director of the Administrative Office will be responsible for training employees in the obligations imposed by the Privacy Act. No substantive changes are made to this subsection. Proposed § 792.37(b) (current § 790.38(a)) implements portions of section (e) and informs employees of sections (g) and (i) of the Privacy Act. Proposed § 792.37(c) (1)–(10) (current § 790.38(c) (1)–(10)) implement various provisions of sections (e), (c) and (q) of the Privacy Act. The only substantive change to these subsections is to § 792.37(c)(8). The FOIA (5 U.S.C. 552) has been added to this subsection as an Act under which disclosures can be made. This is due to a 1982 amendment to the Privacy Act that added the following provision as section (q)(2) to the Privacy Act: "No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title."

Subpart C—Subpoenas

This Subpart is currently § 790.6. It is moved in this proposal to the end of the FOIA and Privacy regulatory provisions so that it will be easier to locate.

This section was last revised in December, 1981. (*See* 46 FR 62835 (December 29, 1981). It sets forth policy on when NCUA is subject to requests for exempt material by legal process, particularly when and under what circumstances exempt information that is the subject of a subpoena will be released. Current § 790.6(a), (b) and (c) now appear as § 792.40, 792.41 and 792.42. Service of subpoena or other legal process requesting agency records shall be made upon the Office of General Counsel. The Office of General Counsel will provide advice to all agency personnel or third parties when agency records are sought from them. If the Office of General Counsel advises

not to produce the requested information, the party required to respond should decline to produce based on the advice of the Office of General Counsel. The section is necessary to protect NCUA's interest in the exempt material. It is substantively unchanged in the proposal.

Subpart D—Security Procedures for Classified Information

This section, § 790.11 in the current regulations, becomes Subpart D of Part 792 in the proposal.

Section 790.11 was issued in November, 1979, after the promulgation of Executive Order 12065. *See* 44 FR 65732 (November 15, 1979). The Executive Order set forth certain requirements and procedures to be followed when agencies classify and otherwise handle national security information. The section deals with internal agency procedures. A new Executive Order (Executive Order 12346, 47 FR 15557, April 2, 1982) was issued in 1982 replacing Executive Order 12065. Section 5.3 of Executive Order 12346 requires that:

[a]gencies that originate or handle classified information shall: * * * (b) promulgate implementing regulations. * * *

NCUA has in the past handled classified information, but has not done so recently. The Board invites comment on whether this regulation is any longer needed.

The proposed rule is similar to the current § 790.11. The numbering of proposed Subpart D is § 792.50 and 792.51. All references to Executive Order 12065 have been changed to Executive Order 12346. Current § 790.11(b)(2) states that the Director of the Office of Administration will handle all national security information. If the Director or Director's designee is unavailable, the documents will be handled by the FOIA Officer. If the FOIA Officer is unavailable, the documents will be handled by the Director of Personnel. Since the Director of the Administrative Office is the FOIA Officer, reference to the FOIA Officer is deleted in the proposal. If the Director of the Administrative Office or the designee is unavailable, the documents will be turned over to the Director of Personnel.

Section 790.11(b)(3), dealing with document reproduction, has been deleted in the proposal since this subject is not addressed in the new Executive Order. The reference to the Information Security Oversight Office Directive No. 1, Section IV F 5a in current § 790.11(b)(4) has been deleted since the directive is subject to change. Current § Section 790.11(b)(5) addresses employee education. The last sentence refers to future employees and is eliminated because it is redundant.

Regulatory Procedures

Since these proposed amendments impose requirements on the NCUA rather than on credit unions, submitters or requesters of information, the Regulatory Flexibility Act, the Paperwork Reduction Act and Executive Order 12612 ("Federalism") are inapplicable.

List of Subjects

12 CFR Part 790

Credit Unions, description, organization

12 CFR Part 792

Credit unions, Applications, Freedom of information, Fees, waivers, Subpoenas, Privacy, National security procedures.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to revise its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

§ 701.5 [Removed]

1. That § 701.5 be removed.

2. That Part 790 be revised to read as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

Sec

790.1 Scope.
790.2—Central and Regional Office Organization.
790.3—Requests for Agency Action.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552.

§ 790.1 Scope.

This part contains a description of NCUA's organization and the procedures for public requests for action by the Agency. Part 790 pertains to the practices of the National Credit Union Administration only and does not apply to credit union operations.

§ 790.2 Central and Regional Office Organization.

(a) *General organization.* NCUA is composed of the NCUA Board with a Central Office in Washington, DC, six Regional Offices, and the NCUA Central Liquidity Facility.

(b) *Central Office.* The Central Office address is NCUA, 1776 G Street NW., Washington, DC 20456.

(1) The NCUA Board. NCUA is managed by its Board. The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board also serves as the Board of Directors of the Central Liquidity Facility.

(2) Secretary of the Board. The Secretary of the Board is responsible for the secretarial functions of the National Credit Union Administration Board. The Secretary's responsibilities include preparing of agendas for meetings of the Board, preparing and maintaining the minutes for all official actions taken by the Board, and executing all documents adopted by the Board or under its direction. The Secretary also serves as the Secretary of the Central Liquidity Facility.

(3) Office of the Executive Director. The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: the General Counsel; Internal Auditor; Chief Economist; the Regional Directors; and the Office Directors for Public and Congressional Affairs, for Examination and Insurance, and for Information Systems. Because of the nature of the attorney/client relationship between the Board and General Counsel, and because the Internal Auditor serves as the "eyes and ears" of the Board, these executives may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Executive Director is also responsible for managing the Personnel Office, the Controller's Office, and the Administrative Office.

(4) Office of Examination and Insurance. The Director of the Office of Examination and Insurance: formulates standards and procedures for examination and supervision of the community of federally-insured credit unions, and reports to the Board on the performance of the examination program; administers the National Credit Union Share Insurance Fund, and reports on its condition and performance, including the premiums

invested, income earned, and assistance provided; serves as the Agency's expert on accounting principles and standards, on auditing standards, and on investments for credit unions, and represents NCUA at meetings with the AICPA, FFIEC and GAO; and collects data and provides statistical and economical reports and research papers on market trends affecting credit unions.

(5) Office of General Counsel. The General Counsel has overall responsibility for all legal matters affecting NCUA and for liaison with the Department of Justice. The General Counsel represents NCUA in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides NCUA with legal advice and opinions on all matters of law, and the public with interpretations of the Federal Credit Union Act, the NCUA Rules and Regulations, and other NCUA Board directives. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the **Federal Register**, including rules, regulations, and notices required by law.

(6) Office of the Internal Auditor. The Internal Auditor is responsible for scheduling and conducting independent and objective audits of all NCUA programs and functions to uncover waste, fraud or abuse, and noncompliance with statutory and other requirements which the Board is responsible for carrying out or has established. The Internal Auditor also monitors corrective actions taken for deficiencies detailed in audit reports and conducts special investigations as directed by NCUA Board members or the Executive Director.

(7) Office of the Chief Economist. The Chief Economist is responsible for developing and conducting research projects in support of NCUA programs, and for preparing periodic reports on research activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other governmental and private groups.

(8) Office of Public and Congressional Affairs. The Director of the Office of Public and Congressional Affairs is responsible for maintaining NCUA's relationship with the public and the media; for liaison with the U.S. Congress, and with other Executive Branch agencies concerning legislative matters; and for the analysis and development of legislative proposals and public affairs programs.

(9) Office of Information Systems. The Director of the Office of Information Systems has responsibility for managing and operating NCUA's electronic data processing operations and for meeting the Agency's needs for automated systems and computing. The Director appraises and reviews analytical and statistical reporting systems for which the Office is responsible, and reports to the Board whether such systems meet Agency needs.

(10) Controller's Office. The Controller, as NCUA's chief financial officer, is in charge of budgetary, accounting and financial matters for the Agency. The Controller is responsible for submitting annual budget and staffing requests for approval by the NCUA Board, and, as required, by the Office of Management and Budget; for collecting from federally-insured credit unions the capitalization deposits required as a condition of deposit insurance, and, as determined by the Board, for collecting from Federal credit unions annual operating fees; for processing payroll, travel, and commercial account disbursements; and for preparing internal financial reports.

(11) Personnel Office. The Personnel Office is responsible for comprehensive personnel management, including developing programs for recruitment and placement, position classifications and management, employee-management relations, employee incentives and awards, and employee development and training.

(12) Office of Administration. The Director of the Office of Administration is responsible for managing the Agency's resources and providing NCUA's executive offices and Regional Directors with administrative services generally, including: agency security; information resources management; contracting and procurement; contract management; management of equipment and supplies; acquisition, layout and management of office space; records management; printing and graphics; and warehousing and distribution. The Director is also responsible, in conjunction with the Office of General Counsel, in carrying out the Agency's responsibilities under the Freedom of Information Act, the Privacy Act, and the Paperwork Reduction Act, and in directing Agency responses to reporting requirements.

(c) *Regional Offices.* (1) NCUA's programs are conducted through six regional offices:

Region No.	Area Within Region	Office Address
I	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205.
II	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	1776 G Street, NW., Suite 800, Washington, DC 20006.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin	300 Park Blvd., Suite 155, Itasca, IL 60604.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	4807 Spicewood Spring Road, Stillhouse Canyon Building 5, Austin, TX 78759
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington	2300 Clayton Road, Suite 1350 Concord, CA 94520.

(2) A Regional Director is in charge of each Regional Office. The Regional Director manages NCUA's programs in the Region assigned in accordance with established policies. This person's duties include: directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public, private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which have an interest in credit union matters in the assigned Region. The Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, state agencies, city and county officials, and other governmental units that affect credit unions. The Regional Director is

aided by a Deputy Regional Director and an Associate Regional Director. Staff working in the Regional Office, with the exception of the Special Actions staff, report to the Deputy Regional Director. Each Region is divided into examiner districts, each assigned to a Supervisory Examiner; groups of examiners are directed by a Supervisory Examiner, each of whom in turn reports directly to the Associate Regional Director. Special Actions staff also report to the Associate Regional Director.

(d) NCUA Central Liquidity Facility ("CLF"). (1) General Organization. The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed ownership Government corporation under the Government Corporation Control Act (31 U.S.C. 9101, et seq.). The CLF's corporate headquarters is located at 1776 G Street, NW., Washington, DC 20456. NCUA's Central and Regional Offices provide services and information to the CLF on a cost reimbursable basis; depending upon need, employees of CLF may be assigned to the Regional Offices. The CLF is also assisted in its operations by corporate credit unions designated as "Agent Members," which provide CLF services to other credit unions lacking direct access to the CLF.

(2) Board of Directors. The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the CLF Board of Directors. The CLF Board is assisted in managing the CLF by these officers, who are appointed by and are responsible to the CLF Board: President, Vice President for Credit, Vice President for Finance, Secretary, and Treasurer.

(3) President. The President is the chief executive officer of the CLF and works under the general supervision of the CLF Board. The President provides overall executive direction and guidance and is responsible for the ongoing management of the CLF. The President manages the CLF staff and their activities in the Central Office and the Regions; provides general supervision to the other officers of the CLF; and initiates and maintains working relationships with the credit union community, other Federal and state government authorities, and the banking and investment communities.

(4) Vice President for Credit. The Vice President for Credit is responsible for planning, implementing, and directing programs related to the CLF's lending policies, procedures and regulations. The Vice President for Credit has responsibility for directing CLF lending to regular members, agent members and agent group representatives, and for monitoring lending activities throughout the CLF to assure conformity with policies, procedures and regulations. The Vice President for Credit must also develop and maintain a working relationship with state supervisors, state insurance authorities, and Federal financial agencies.

(5) Vice President for Finance. The Vice President for Finance is responsible for planning, implementing, and directing borrowing and investment programs to finance CLF operations. The Vice President for Finance has responsibility for directing CLF borrowing from the Federal Financing Bank and other sources; for the CLF's investment of funds in the U.S. Government and agency securities; and for developing and maintaining working relationships with the investment and banking communities and Federal financial agencies.

(6) Treasurer. The Treasurer develops and manages the CLF's operational systems to monitor and report the use of the CLF's funds. The Treasurer establishes accounting policies and procedures for the CLF, and maintains working relationships with Agent members, state supervisors, state insurance corporations, and Federal financial agencies.

(7) Secretary. The Secretary of the NCUA Board serves as the Secretary of the CLF. The Secretary has responsibility for preparing the Board's agenda, giving all required notices, and keeping the minutes of the Board.

§ 790.3 Requests for Agency Action

Except as otherwise provided by NCUA regulation, all applications, requests, and submittals for Agency action shall be in writing and addressed to the appropriate Office described in § 790.2. This will usually be one of the Regional Offices. In instances where the appropriate Office cannot be determined, requests should be sent to the Office of Public and Congressional Affairs.

3. That Part 792 of the NCUA Regulations, entitled "NCUA Employee Responsibility and Conduct," be redesignated as Part 796 of the NCUA Regulations.

4. That Part 792—of the NCUA Regulations be added to read as follows:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

Sec.
792.1 Scope.
792.2 Information made available to the public and request for such information.
792.3 Unpublished, confidential and privileged information.
792.4 Release of exempt records.
792.5 Fees for document search, review, and duplication; waiver and reduction of fees.
792.6 Agency determination.
792.7 Confidential commercial information.

Subpart B—The Privacy Act

792.20 Scope.
792.21 Definitions.
792.22 Procedures for requests pertaining to individual records in a system of records.
792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.
792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.
792.25 Special procedures: Information furnished by other agencies; medical records.
792.26 Requests for correction or amendment to record, administrative review of requests.
792.27 Appeal of initial determination.
792.28 Disclosure of record to person other than the individual to whom it pertains.
792.29 Accounting for disclosures.
792.30 Requests for accounting for disclosures.
792.31 Collection of information from individuals; information forms.
792.32 Contracting for the operation of a system of records.
792.33 Fees.
792.34 Exemptions.
792.35 Security of systems of records.
792.36 Use and collection of Social Security numbers.
792.37 Training and standards of conduct with regard to privacy.

Subpart C—Subpoenas

792.40 Service.
792.41 Advice to person served.
792.42 Appearance by person served.

Subpart D—Security Procedures for Classified Information

792.50 Program.
792.51 Procedures.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552, 5 U.S.C. 552a, Executive Orders 12600 and 12356.

Subpart A—The Freedom of Information Act

792.1 Scope.

This Subpart sets forth the procedures for processing requests for information under the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

§ 792.2 Information made available to the public and requests for such information.

(a) Except to the extent that the matters set forth herein relate to or contain information which is exempted from public disclosure under the FOIA as amended (5 U.S.C. 552) or are promptly published and copies are for sale, NCUA shall make available for public inspection and copying, upon request made in accordance with the provisions of § 792.2(g): (1) The final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by NCUA and are not published in the **Federal Register;** and (3) administrative staff manuals and instructions to staff affecting a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, NCUA may delete identifying details when an opinion, statement of policy, interpretation, or staff manual or instruction is made available or published. In each case, the justification for the deletion shall be fully explained in writing.

(c) NCUA also maintains current indices providing identifying information for the public for any matter referred to in paragraph (a) of this section issued, adopted, or promulgated after July 4, 1967. Manuals relating to general and technical information and booklets published by NCUA are listed on the "NCUA Publications List," which indicates those items available from the Agency. The Directory of Credit Unions, published by NCUA, is also available. A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions and certain internal manuals are maintained on a "Directives Control Index." NCUA has determined that publication of the indices is unnecessary and impractical, but copies of indices will be provided on request at their duplication cost and are available for public inspection and copying. The listing of any material in any index is for the convenience of possible users of the materials and does not constitute a determination that all of the items listed will be disclosed or are subject to disclosure.

(d) The materials referred to in paragraph (a) of this section may be relied on, used, or cited as precedent by NCUA against a party, provided: (1) The materials have been indexed and either made available or published; or (2) the party has actual and timely notice of the materials' contents.

(e) Except with respect to records made available under this section or published in the **Federal Register,** or to the extent that records relate to or contain information which is exempt from public disclosure under the FOIA, NCUA, upon a request which reasonably describes records and is made in accordance with § 792.2(g), will make such records available to any person who agrees to pay the direct costs specified in § 792.5. A "reasonable description" is one which is sufficient to enable a professional employee of NCUA, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(f) Information Centers. The Central Office and the Regional Offices are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Administrative Office is responsible for the operation of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices.

(g) *Methods of request.* (1) Indices. Requests for indices should be made to NCUA, Administrative Office, 1776 G Street, NW., Washington, DC 20456. The indices indicate how to obtain the documents listed therein.

(2) All other records. Requests for all other records made under § 792.3(e) should be addressed to the appropriate Regional Director. When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Administrative Office at the address noted in § 792.2(g)(1).

(3) Improper address. Failure to properly address a request may defer the effective date of receipt by NCUA for commencement of the time limitation stated in § 792.6(a)(1), to take account of the time reasonably required to forward the request to the appropriate office or employee.

§ 792.3 Unpublished, confidential and privileged information.

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and not subject to disclosure, except as otherwise provided in this Part, if such records are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to: (A) The personnel records of the NCUA; (B) the personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and (C) files containing reports, records or other material pertaining to individual cases in which disciplinary or other

administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) Could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source; (E) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

§ 792.4 Release of exempt records.

(a) Prohibition against disclosure. Except as provided in § 792.4(b), no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

(b) Disclosure authorized. Exempt NCUA records may be disclosed only in accordance with the following conditions and requirements:

(1) Exempt records—Disclosure to credit unions, financial institutions and state and Federal agencies. The NCUA Board or any person designated by it in writing, in its sole discretion, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

(2) Exempt records—Disclosure to investigatory agencies. The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper Federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of Federal or state civil or criminal law.

(3) Exempt records—Disclosure to third parties. The NCUA Board, or any person designated by it in writing, may disclose copies of exempt records to any third party where requested to do so in writing. The request shall: (i) Specify the record or records to which access is requested; and (ii) give the reasons for the request. Any NCUA employee authorized to disclose exempt NCUA records to third parties may disclose the records only upon determining that good cause exists for the disclosure. The designated NCUA official shall impose such terms and conditions as are deemed necessary to protect the confidential nature of the record, the financial integrity of any credit union or other organization or person to which the records relate, and the legitimate privacy interests of any individual named in such records.

§ 792.5 Fees for document search, review, and duplication; waiver and reduction of fees.

(a) *Definitions.* (1) "Direct costs" means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) "Duplication" means the process of making a copy of a document needed to respond to a FOIA request.

(4) "Review" means: (A) the process of examining documents located in response to a request that is for a commercial use (*see* § 792.5(a)(5)) to determine whether any portion of a document located is permitted to be withheld; and (B) the process of preparing such documents for disclosure.

(5) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(7) "Noncommercial scientific institution" means an institution: (A) That is not operated on a "commercial" basis as that term is used in § 792.5(a)(5); and (B) that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Included within the meaning of "public" is the credit union community. The term "news" means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.* NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA requires it alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) Manual searches and review—NCUA will charge fees at the following rates for manual searches for and review of records:

(A) If search/review is done by clerical staff, the hourly rate for GS–5, step 1, plus 16 percent of that rate to cover benefits;

(B) If search/review is done by professional staff, the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits.

(2) Computer searches—NCUA will charge fees at the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(3) Duplication of records—

(A) The per-page fee for paper copy reproduction of a document is $.25;

(B) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(C) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) Fees to exceed $25—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel to reformulate the request to meet the person's needs at a lower cost.

(5) Other services—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) Restriction on assessing fees—NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) Waiving or reducing fees—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(A) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(iv) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities,

(B) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(C) If the required public interest exists and the requester's commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(c) *Categories of requesters.*

(1) Commercial use requesters—NCUA will assess commercial use requesters' fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) Educational institution, noncommercial scientific institution, and requesters who are representatives of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) All other requesters—NCUA shall charge requesters not included in either of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C., and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to give an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requester with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed, plus any applicable interest as provided in subsection 792.5(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under § 792.5(g)(1) or § 792.5(g) (2), the administrative time limits prescribed in § 792.6(a) will begin only after NCUA has received the fee payments described.

§ 792.6 Agency determination.

(a) Upon any request for records published in the **Federal Register**, or made available under § 792.2, NCUA will:

(1) Determine within 10 working days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether, or the extent to which, to comply with such request; and will upon such determination notify the person making the request that any adverse determination is not a final agency action, and that such person may appeal any adverse determination to the Office of General Counsel;

(2) Make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial

determination (in cases of partial denials). If, on appeal, the denial of the request for records is in whole or in part upheld, the Office of General Counsel will notify the person making such request of the provisions for judicial review of that determination under the FOIA. In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) In unusual circumstances as specified herein, the time limits prescribed in either paragraph (a)(1) or (a)(2) of this section may be extended by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than 10 working days. "Unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein.

(c)(1) The appropriate Regional Director, the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to a professional NCUA employee who is familiar with the subject area of the request. Other members of the NCUA's staff may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in paragraph (a)(1) of this section unless the request involves an unusual circumstance as provided in paragraph (b) of this section.

(2) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in General Counsel's stead shall make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(3) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA-APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(2) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

(d) Any person making a request to NCUA for records published in the **Federal Register**, or made available under § 792.2 shall be deemed to have exhausted administrative remedies with respect to such request if NCUA fails to comply with the applicable time limit provisions of this section. On complaint filed in the appropriate U.S. District Court, if the Government can show exceptional circumstances exist and that NCUA is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the Agency additional time to complete its review of the records. Upon any NCUA determination to comply with a request for records, the records will be made promptly available. Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for the denial.

(e) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where, after diligent effort, this has not been achieved within the required period, NCUA may advise the person making the request: that a determination to deny the request has been made because the records have not been found or examined; that this determination will be reconsidered when the search or examination is completed (and the time within which completion is expected); but that the person making the request may immediately file an administrative appeal.

§ 792.7 Confidential commercial information.

(a) Confidential commercial information provided to NCUA by a submitter shall be disclosed pursuant to a FOIA request in accordance with this Section.

(b) *Definitions* For purposes of this Section: (1) "Confidential commercial information"—means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.3(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter"—means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Designation of business information—Submitters of business information shall use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.3(a)(4). Such a designation shall expire ten years after the date of submission.

(d) Notice to submitters—NCUA shall provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.3(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.3(a)(4).

This notice will afford the submitter an opportunity to object to disclosure pursuant to paragraph (e) of this section. A copy of the notice shall also be provided to the FOIA requester.

(e) Opportunity to object to disclosure—Through the notice described in paragraph (d) of this Section, NCUA shall afford a submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. Such statement shall describe why the information is confidential commercial information and should not be disclosed.

(f) Notice of intent to disclose—Whenever NCUA decides to disclose confidential commercial information over the objection of a submitter, it shall forward to the submitter and to the requester, within a reasonable number of days prior to the specified disclosure date, a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(g) Notice of lawsuit—If a requester brings suit seeking to compel disclosure of confidential commercial information,

NCUA shall promptly notify the submitter.

(h) Exceptions to notice requirements—The notice requirements of paragraph (d) of this section do not apply if:

(1) NCUA determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, NCUA shall provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

Subpart B—The Privacy Act

§ 792.20 Scope.

This Subpart governs requests made of NCUA under the Privacy Act (5 U.S.C. 552a). The regulation applies to all records maintained by NCUA which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records from which information may be retrieved by use of an identifying particular; sets forth procedures whereby individuals may seek and gain access to records concerning themselves and request amendments of those records; and sets forth requirements applicable to NCUA employees' maintaining, collecting, using, or disseminating such records.

§ 792.21 Definitions.

For purposes of this subpart:

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Maintain" includes maintain, collect, use, or disseminate.

(c) "Record" means any item, collection, or grouping of information about an individual that is maintained by NCUA, and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(d) "System of records" means a group of any records under NCUA's control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 of the United States Code.

§ 792.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to that individual, or an individual seeking access to information or records pertaining to that individual which are available under the Privacy Act shall present a request to the NCUA official identified in the access procedure section of the "Notice of Systems of Records" published in the **Federal Register** which describes the system of records to which the individual's request relates. An individual who does not have access to the **Federal Register** and who is unable to determine the appropriate official to whom a request should be submitted may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, in which case the request will then be referred to the appropriate NCUA official and the date of receipt of the request will be determined as the date of receipt by the official.

(b) In addition to meeting the identification requirements set forth in § 792.23, an individual seeking notification or access, either in person or by mail, shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which it is thought to be included, as described in the "Notice of Systems of Records" published in the **Federal Register**.

§ 792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The following standards are applicable to an individual submitting requests either in person or by mail under § 792.22:

(1) If not personally known to the NCUA official responding to the request, an individual seeking access to records about that individual in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or credit card);

(2) An individual seeking access to records about that individual by mail may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If less than all of this requisite identifying information is provided, the NCUA official responding to the request may require further identifying information prior to any notification or responsive disclosure.

(3) An individual seeking access to records about that individual by mail or in person, who cannot provide the required documentation or identification, may provide a notarized statement affirming identity and recognition of the penalties for false statements pursuant to 18 U.S.C. 1001.

(b) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing identity of the minor or other person as required in paragraph (a) of this section, furnish a copy of a birth certificate showing parentage or a court order establishing guardianship.

(c) An individual may request by telephone notification of the existence of and access to records about that individual and contained in a system of records. In such a case, the NCUA official responding to the request shall require, for the purpose of comparison and verification of identity, at least two items of identifying information (such as date of birth, home address, social security number) already possessed by the NCUA. If the requisite identifying information is not provided, or otherwise at the discretion of the responsible NCUA official, an individual may be required to submit the request by mail or in person in accordance with paragraph (a) above.

(d) An individual seeking to review records about that individual may be accompanied by another person of their own choosing. In such cases, the individual seeking access shall be required ro furnish a written statement authorizing discussion of that individual's records in the accompanying person's presence.

(e) In addition to the requirements set forth in paragraphs (a), (b) and (c) of this section, the published "Notice of System of Records" for individual systems may include further requirements of identification where necessary to retrieve the individual records from the system.

§ 792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.

(a) The NCUA official identified in the record access procedure section of the "Notice of Systems of Records" and identified in accordance with § 792.22(a), by an individual seeking notification of, or access to, a record, shall be responsible: (1) For determining whether access is available under the Privacy Act; (2) for notifying the requesting individual of that determination; and (3) for providing access to information determined to be available. In the case of an individual access request made in person, information determined to be available shall be provided by allowing a personal review of the record or portion of a record containing the information requested and determined to be available, and the individual shall be allowed to have a copy of all or any portion of available information made in a form comprehensible to him. In the case of an individual access request made by mail, information determined to be available shall be provided by mail, unless the individual has requested otherwise.

(b) The following time limits shall be applicable to the required determinations, notification and provisions of access set forth in paragraph (a) of this Section:

(1) A request concerning a single system of records which does not require consultation with or requisition of records from another agency shall be responded to within 10 working days after receipt of the request;

(2) A request requiring requisition of records from or consultation with another agency shall be responded to within 10 working days after such requisition or resolution of the required consultation. Such required requisition or consultation shall be initiated within 10 working days after receipt of the request;

(3) If a request under paragraphs (b) (1) or (2) of this Section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Director of the Administrative Office may, upon written request of the official responsible for action upon the record request, extend the time period established by these regulations for an additional 15 working days.

(c) Nothing in this section shall be construed to allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding, or any information exempted from the access provisions of the Privacy Act.

§ 792.25 Special procedures: Information furnished by other agencies; medical records.

(a) When a request for records or information from NCUA includes information furnished by other Federal agencies, the NCUA official responsible for action on the request shall consult with the appropriate agency prior to making a decision to disclose or refuse access to the record, but the decision whether to disclose the record shall be made in the first instance by the NCUA official.

(b) When an individual requests medical records concerning that individual, the NCUA official responsible for action on the request may advise the individual that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation and upon proper verification of identity, the NCUA official shall permit the physician to review the records or to receive copies of the records by mail. The determination of which records should be made available directly to the individual and which records should not be disclosed directly because of possible harm to the individual shall be made by the NCUA official responsible for action on the request.

§ 792.26 Requests for correction or amendment to a record; administrative review of requests.

(a) An individual may request amendment of a record concerning that individual by addressing a request, either in person or by mail, to the NCUA official identified in the "contesting record procedures" section of the "Notice of Systems of Records" published in the **Federal Register** and describing the system of records which contains the record sought to be amended. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the responsible NCUA official at the address specified in the "Notice of Systems of Records" describing the system of records which contains the contested record. An individual who does not have access to the NCUA's "Notice of Systems of Records," and to whom the appropriate address is otherwise unavailable may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1778 G Street NW., Washington, DC 20456, in which case the request will then be referred to the appropriate NCUA official. The date of receipt of the request will be determined as of the date of receipt by that official.

(b) Within 10 working days of receipt of the request, the appropriate NCUA official shall advise the individual that the request has been received. The appropriate NCUA official shall then promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record is to be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.27 for the individual to request a review of that rejection.

§ 792.27 Appeal of initial determination

(a) A rejection, in whole or in part, of a request to amend or correct a record may be appealed to the General Counsel within 30 working days of receipt of notice of the rejection. Appeals shall be in writing, and shall set forth the specific item of information sought to be corrected and the documentation justifying the correction. Appeals shall be addressed to the Office of General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Appeals shall be decided within 30 working days of receipt unless the General Counsel, for good cause, extends such period for an additional 30 working days.

(b) Within the time limits set forth in paragraph (a) of this section, the General Counsel shall either advise the individual of a decision to amend or correct the record, or advise the individual of a determination that an amendment or correction is not warranted on the facts, in which case the individual shall be advised of the right to provide for the record a "Statement of Disagreement" and of the right to further appeal pursuant to the Privacy Act. For records under the jurisdiction of the Office of Personnel Management, appeals will be made pursuant to that agency's regulations.

(c) A statement of disagreement may be furnished by the individual. The statement must be sent, within 30 days of the date of receipt of the notice of General Counsel refusal to authorize correction, to the General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Upon receipt of a statement of disagreement in accordance with this section, the General Counsel shall take steps to ensure that the statement is included in the system of records containing the disputed item and that the original item is so marked to

indicate that there is a statement of dispute and where, within the system of records, that statement may be found.

(d) When a record has been amended or corrected or a statement of disagreement has been furnished, the system manager for the system of records containing the record shall, within 30 days thereof, advise all prior recipients of information to which the amendment or statement of disagreement relates whose identity can be determined by an accounting made as required by the Privacy Act of 1974 or any other accounting previously made, of the amendment or statement of disagreement. When a statement of disagreement has been furnished, the system manager shall also provide any subsequent recipient of a disclosure containing information to which the statement relates with a copy of the statement and note the disputed portion of the information disclosed. A concise statement of the reasons for not making the requested amendment may also be provided if deemed appropriate.

(e) If access is denied because of an exemption, the individual shall be notified of the right to appeal that determination to the General Counsel within 180 days after receipt of the determination. Such an appeal shall be determined within 30 days.

§ 792.28 Disclosure of record to person other than the individual to whom it pertains.

No record or item of information concerning an individual which is contained in a system of records maintained by NCUA shall be disclosed by any means of communication to any person, or to another agency, without the prior written consent of the individual to whom the record or item of information pertains, unless the disclosure would be—

(a) To an employee of the NCUA who has need for the record in the performance of duty;

(b) Required by the Freedom of Information Act;

(c) For a routine use as described in the "Notice of Systems of Records," published in the **Federal Register**, which describes the system of records in which the record or item of information is contained;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(e) To a recipient who has provided the NCUA with advance adequate written assurance that the record or item will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record or item which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to NCUA specifying the particular portion desired and the law enforcement activity for which the record or item is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with section 3711(f) of Title 31 of the United States Code (31 U.S.C. 3711(f)).

§ 792.29 Accounting for disclosures.

(a) Each system manager identified in the "Notice of Systems of Records" as published in the **Federal Register** for each system of records maintained by the NCUA, shall establish a system of accounting for all disclosures of information or records concerning individuals and contained in the system of records, made outside NCUA. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the information disclosed, the name and address of the person or agency to whom disclosure was made, and the date of disclosure. When records are transferred to the National Archives and Records Administration for storage in records centers, the accounting pertaining to those records shall be transferred with the records themselves.

(c) Any accounting made under this section shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 792.30 Requests for accounting for disclosures.

At the time of the request for access or correction or at any other time, an individual may request an accounting of disclosures made of the individual's record outside the NCUA. Request for accounting shall be directed to the system manager. Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual, except that an accounting need not be made available if it relates to: (a) A disclosure made pursuant to the Freedom of Information Act (5 U.S.C. 552); (b) a disclosure made within the NCUA; (c) a disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (d) a disclosure which has been exempted from the provisions of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a (j) or (k).

§ 790.31 Collection of information from individuals; information forms.

(a) The system manager, as identified in the "Notice of Systems of Records" published in the **Federal Register** for each system of records maintained by the Administration, shall be responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) The purpose of the review shall be to eliminate any requirement for information that is not relevant and necessary to carry out an NCUA function and to accomplish the following objectives:

(1) To ensure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of any authorized law enforcement activity;

(2) To ensure that the form or accompanying statement makes clear to the individual which information by law must be disclosed and the authority for

that requirement, and which information is voluntary;

(3) To ensure that the form or accompanying statement makes clear the principal purpose or purposes for which the information is being collected, and states concisely the routine uses that will be made of the information;

(4) To ensure that the form or accompanying statement clearly indicates to the individual the existing rights, benefits or privileges not to provide all or part of the requested information; and

(5) To ensure that any form requesting disclosure of a social security number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number, or clearly advises the individual that disclosure is voluntary and that no consequence will flow from a refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) Any form which does not meet the objectives specified in the Privacy Act and this section shall be revised to conform thereto.

§ 792.32 Contracting for operation of a system of records.

(a) No NCUA component shall contract for the operation of a system of records by or on behalf of the Agency without the express approval of the NCUA Board.

(b) Any contract which is approved shall continue to ensure compliance with the requirements of the Privacy Act. The contracting component shall have the responsibility for ensuring that the contractor complies with the contract requirements relating to the Privacy Act.

§ 792.33 Fees.

(a) Fees pursuant to 5 U.S.C. 552a(f)(5) shall be assessed for actual copies of records provided to individuals on the following basis, unless the NCUA official determining access waives the fee because of the inability of the individual to pay or the cost of collecting the fee exceeds the fee:

(1) For actual copies of documents, 25 cents per page; and

(2) For copying information, if any, maintained in nondocument form, the direct cost to NCUA may be assessed.

(b) If it is determined that access fees chargeable under this section will amount to more than $25, and the individual has not indicated in advance willingness to pay fees as high as are anticipated, the individual shall be notified of the amount of the anticipated fees before copies are made, and the individual's access request shall not be considered to have been received until receipt by NCUA of written agreement to pay.

§ 792.34 Exemptions.

(a) NCUA maintains three systems of records which are exempted from some of the provisions of the Privacy Act. In paragraph (b) of this section, those systems of records are identified by System Name and System Number, as stated in the NCUA's "Notice of Systems of Records," published in the **Federal Register**. The provisions from which each system is exempted and the reasons therefor are also set forth.

(b)(1) System NCUA–1, entitled "Employee Security Investigations Containing Adverse Information," consists of adverse information about NCUA employees which has been obtained as a result of routine Office of Personnel Management Security Investigations. To the extent that NCUA maintains records in this system pursuant to Office of Personnel Management guidelines which require or may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the Office of Personnel Management Government-Wide System of Records Number 4, entitled "Personnel Investigations Records," and thus are subject to the applicable specific exemptions promulgated by the Office of Personnel Management. Additionally, in order to ensure the protection of properly confidential sources, particularly as to those records which are not maintained pursuant to such Office of Personnel Management requirements, the records in these systems of records are exempted, pursuant to section k(5) of the Privacy Act (5 U.S.C. 552a(k)(5)), from section (d) of the Act (5 U.S.C. 552a(d)). To the extent that disclosure of a record would reveal the identity of a confidential source, NCUA need not grant access to that record by its subject. Information which would reveal a confidential source shall, however, whenever possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(2) System NCUA–4, entitled "Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act," consists of a limited number of records about individuals suspected of involvement in felonies or infractions under the Federal Credit Union Act or criminal statutes. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained, however, for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), from sections (c)(3) and (d)). NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA shall, to the extent necessary to realize the above-stated purposes, neither confirm nor deny the existence of the records but shall advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, should review of the record reveal that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under Federal law, the individuals shall be advised of the existence of the information and shall be provided the information, except to the extent disclosure would identify a confidential source. Information which would identify a confidential source shall, if possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(c) For purposes of this section, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1976, under an implied promise that the identity of the source would be held in confidence.

§792.35 Security of systems of records.

(a) Each system manager, with the approval of the head of that Office, shall establish administrative and physical controls to insure the protection of a system of records from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records, but at a minimum must insure: that records are enclosed in a manner to protect them from public view; that the area in which the records are stored is supervised during all business hours to

prevent unauthorized personnel from entering the area or obtaining access to the records; and that the records are inaccessible during nonbusiness hours.

(b) Each system manager, with the approval of the head of that Office, shall adopt access restriction to insure that only those individuals within the agency who have a need to have access to the records for the performance of duty have access. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§ 792.36 Use and collection of Social Security numbers.

The head of each NCUA Office shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required without statutory or regulatory authorization to furnish Social Security numbers, and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 792.37 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Administrative Office, with advice from the General Counsel, shall be responsible for training NCUA employees in the obligations imposed by the Privacy Act and this Subpart.

(b) The head of each NCUA Office shall be responsible for assuring that employees subject to that person's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness, and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized, is maintained without public notice.

(c) With respect to each system of records maintained by NCUA, Agency employees shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out an NCUA responsibility;

(2) Collect from individuals only that information which is necessary to NCUA functions or responsibilities:

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the routine uses that will be made of the information, and the effects, both legal and practical of not furnishing the information;

(5) Not collect, maintain, use, or disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used, or disseminated; or (iii) activities involved are pertinent to and within the scope of an authorized investigation or adjudication.

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier.

(7) Maintain an accounting, in the prescribed form, of all dissemination of personal information outside NCUA, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside NCUA except when authorized by 5 U.S.C. 552a or pursuant to a routine use as set forth in the "routine use" section of the "Notice of Systems of Records" published in the **Federal Register**.

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or outside NCUA; and

(10) Call to the attention of the proper NCUA authorities any information in a system maintained by NCUA which is not authorized to be maintained under the provisions of the Privacy Act, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individuals concerned.

(c) Heads of offices within NCUA shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act.

Subpart C—Subpoenas

§ 792.40 Service

Any subpoena or other legal process requesting Agency records shall be served upon the General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, or upon the Regional Director of the NCUA Region where the legal action from which the legal process issued is pending.

§ 792.41 Advice to person served.

(a) If any NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that person's attendance as a witness concerning written information or the production of documents that may not be disclosed under § 792.42, that person should promptly inform the Office of General Counsel of such service and of all relevant facts, including the nature of the documents and information sought in the subpoena and any facts and circumstances which may be of assistance to the Office of General Counsel in determining whether such documents or information should be produced.

(b) If any third party who is not an NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that party to produce such records or to testify with respect to the requested records, such party should notify the Office of General Counsel in accordance with the procedures set forth in § 792.41(a).

§ 792.42 Appearance by person served.

Except by authorization of the Office of General Counsel to disclose the requested information, any NCUA officer, employee or agent (and any third party having custody of exempt records of the Administration) who is required to respond to the subpoena or other legal process shall attend at the time and place specified and shall respectfully decline to produce the documents and records or to disclose the information called for, basing his refusal upon this paragraph.

Subpart D—Security Procedures for Classified Information

§ 792.50 Program.

(a) The Director of the Administrative Office ("Director") is designated as the person responsible for implementation and oversight of NCUA's program for maintaining the security of confidential information regarding national defense and foreign relations. The Director receives questions, suggestions and complaints regarding all elements of this program. The Director is solely responsible for changes to the program and assures that the program is consistent with legal requirements.

(b) The Director is the Agency's official contact for declassification requests regardless of the point of origin of such requests. The Director is also responsible for assuring that requests

submitted under the Freedom of Information Act are handled in accordance with that Act and other applicable law.

§ 792.51 Procedures.

(a) Mandatory review. All declassification requests made by a member of the public, by a government employee or by an agency shall be handled by the Director or the Director's designee. Under no circumstances shall the Director refuse to confirm the existence or nonexistence of a document under the Freedom of Information Act or the mandatory review provisions of other applicable law, unless the fact of its existence or nonexistence would itself be classifiable under applicable law. Although NCUA has no authority to classify or declassify information, it occasionally handles information classified by another agency. The Director shall refer all declassification requests to the agency that originally classified the information. The Director or the Director's designee shall notify the requesting person or agency that the request has been referred to the originating agency and that all further inquiries and appeals must be made directly to the other agency.

(b) Handling and safeguarding national security information. All information classified "Top Secret," "Secret," and "Confidential" shall be delivered to the Director or the Director's designee immediately upon receipt. The Director shall advise those who may come into possession of such information of the name of the current designee. If the Director is unavailable, the designee shall lock the documents, unopened, in the combination safe located in the Administrative Office. If the Director or the designee is unavailable to receive such documents, the documents shall be delivered to the Director of the Personnel Office who shall lock them, unopened, in the combination safe in the Personnel Office. Under no circumstances shall classified materials that cannot be delivered to the Director be stored other than in the two designated safes.

(c) Storage. All classified documents shall be stored in the combination safe located in the Director's Office, except as provided in paragraph (b) of this section. The combination shall be known only to the Director and the Director's designee holding the proper security clearance.

(d) Employee Education. The Director shall send a memo to every NCUA employee who (1) has a security clearance and (2) may handle classified materials. This memo shall describe NCUA procedures for handling, reproducing and storing classified documents. The Director shall require each such employee to review E.O. 12356.

(e) Agency Terminology. The National Credit Union Administration's Central Office shall use the terms "Top Secret," "Secret" or "Confidential" only in relation to materials classified for national security purposes.

[FR Doc. 88-24506 Filed 10-24-88; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

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

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: The Director of OSMRE is announcing the reopening and extension of the public comment period on the proposed definition of "valid existing rights" (VER) submitted by the State of Illinois as an amendment to its permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment would replace the "good faith all permits" test and judicially determined "takings" test contained in the previous definition with an administratively determined "takings" test. The amendment is intended to simplify the VER determination process.

This notice sets forth the times and locations that the amendment is available for public inspection and the comment period during which interested persons may submit written comments.

DATES: Written comments must be received on or before 4:00 p.m. on November 9, 1988 to ensure consideration during the decision process.

ADDRESSES: Written comments and requests for a public meeting should be mailed or hand-delivered to Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement at the address listed below.

Copies of the proposed amendment, the Illinois program, the administrative record on the Illinois program and all written comments received in response to this notice will be available for public review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701, Telephone: (217) 492-4495

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, 1100 "L" Street, NW., Room 5215, Washington, DC 20240, Telephone: (202) 343-5492

Ilinois Department of Mines and Minerals, Land Reclamation Division, 227 South Seventh Street, Suite 201, Springfield, Illinois 62701, Telephone: (217) 782-4970

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission and Review of Amendments
III. Procedures for Public Comment

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Submission and Review of Amendments

By letter dated March 28, 1986 (Administrative Record No. IL-1028), Illinois proposed extensive revisions to virtually all the regulations contained within its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the **Federal Register** on May 9, 1986 (51 FR 23858).

By letter dated July 22, 1986 (Administrative Record No. IL-1038), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of

Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II.* Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission and reopened the public comment period by published notice in the **Federal Register** on June 26, 1987 (52 FR 24035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing, none was held.

With minor exceptions, OSMRE approved these amendments on October 25, 1988. However, in the **Federal Register** decision notice published on that date, the Director temporarily deferred a decision on the proposed definition of VER in 62 IAC Part 1701 until further public comment could be sought on the additional information resulting from a meeting of Illinois, OSMRE and Interior officials on October 17, 1988. At that meeting the State advanced further rationale for approval of the definition (Administrative Record No. IL–1056).

Illinois proposes to revise the definition of valid existing rights in 62 IAC 1701.5 to resemble the language in the corresponding Federal definition at 30 CFR 761.5. However, on March 22, 1985, in *In re: Permanent II,* the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. Paragraph (c) was also remanded to the extent that it would expand VER under the "needed for and adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the **Federal Register** notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Project* v. *Watt,* C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel,* C.A. 87–2366). the Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court did so on June 22, 1988.

Therefore, the Director is requesting additional comment on whether the "takings" test can be approved as being no less effective than the "good faith all permits" test reinstated by OSMRE in the previously referenced November 20, 1986, suspension notice. The Director is also seeking comment on whether the definition as a whole is no less effective than the corresponding Federal definition.

III. Procedures for Public Comment

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comment on whether the definition of VER proposed by Ilinois fully satisfies the applicable program approval criteria of 30 CFR 732.15. If the definition is deemed adquate, it will become a permanent part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the proposed definition, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed definition may request a meeting at the Springfield Field Office by contacting the person listed under **"FOR FURTHER INFORMATON CONTACT."** Any such meeting will be open to the public and, if possible, notice of the meeting will be posted in advance at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be entered into the administrative record.

List of Subjects in 30 CFR Part 913

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

Robert H. Gentile,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Date: October 20, 1988.

[FR Doc. 88–24651 Filed 10–24–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

Virginia Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSMRE is announcing the reopening of the public comment period on proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments, submitted by Virginia on April 6, 1988, (Administrative Record No. VA–680) address two amendments required by OSMRE (30 CFR 946.16 (d) and (e)) specifying that certain decisions of the Director of Virginia Department of Mines, Minerals and Energy are appealable under Virginia's Administrative Procedures Act. The proposed amendments also provide regulations that would allow operators who have forfeited a performance bond to reestablish eligibility for obtaining a permit to conduct surface coal mining operations. Other subjects addressed are protection of cultural and historic resources, modified standards for measuring the success of tree restocking on forestland, and variances from the requirement to restore the approximate original contour of certain mined lands where the approved post-mining land use in commercial forestry. The intent is to make these provisions consistent with the requirements of SMCRA.

OSMRE published a notice in the May 24, 1988, **Federal Register** (53 FR 18576–18578) announcing receipt of these amendments and inviting public comment on their adequacy. The public comment period ended on June 23, 1988. Review of the proposed amendments identified several apparent deficiencies. OSMRE identified these deficiencies in a letter to Virginia dated August 9, 1988 (Administrative Record No. VA–699).

On September 14, 1988 (Administrative Record No. VA–705), Virginia responded to OSMRE's letter of August 9, 1988, by submitting additional information pertaining to these proposals.

In view of the additional information submitted by Virginia, OSMRE is reopening the public comment period on the proposed amendments. This action is being taken to afford the public in opportunity to again review these proposals in light of the additional information provided by Virginia.

DATES: Written comments must be received on or before 4:00 p.m. on November 9, 1988. Comments received after that date will not necessarily be considered in the Director's decision to approve or disapprove these amendments.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone (202) 343–5492

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–2925

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia regulatory program effective December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 14, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 30 CFR 946.12, 946.13, 946.15, and 30 CFR 946.16.

II. Discussion of Amendments

A discussion of the original proposed amendments is contained in the May 24, 1988, **Federal Register** (53 FR 18576–18578). The additional information submitted by Virginia on September 14, 1988 to modify or support the original proposal is discussed below.

1. Proposed regulation 480–03–19.800.52(a) has been modified by Virginia to include the provision that reinstatement shall not be available to applicants for reinstatement where the Division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act.

2. Additional information has been provided for the Administrative Record to clarify Virginia's intent to apply the criteria of section 480–03–19.733.15 to the correction of outstanding violations and payment fees and penalties, including out-of-state violations, when considering applicant reinstatement. Additional information has also been provided to clarify how Virginia intends to address the obligations of the applicant regarding interest on unpaid penalties or fees, and the determination of whether outstanding violations or unpaid penalties or fees must be corrected or paid or in the process of being corrected or paid before reinstatement becomes effective.

3. As required by OSMRE (30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i)) Virginia has provided documentation of its consultation concerning tree stocking rates with Virginia's Commission of Game and Inland Fisheries.

4. Additional rationale has been provided by Virginia in support of its proposal to include commercial forestry as a form of commercial land use for which a variance from restoration to approximate original contour can be granted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

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 Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural 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 July 12, 1984, 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, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

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

Date: October 3, 1988.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88–24577 Filed 10–24–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 951

Closing of Public Comment Period; Crow Tribe Abandoned Mine Land Reclamation Plan; Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule; closing public comment period.

SUMMARY: In 1982 The Crow Tribe submitted to OSMRE its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 CFR Chapter 7 Subchapter R) as published in the Federal Register (FR) on June 30, 1982, 47 FR 28574–28604. OSMRE requested public comment on the adequacy of the Tribe's plan, 47 FR 21274–21276 (May 18, 1982) and has left the comment period open pending authorizing legislation. On July 11, 1987 legislation ws enacted authorizing the Crow, Hopi and Navajo Tribes to obtain abandoned mine land reclamation program without first having to obtain approval of a Tribal surface mining regulatory program. In response to the newly enacted legislation, on September 9, 1988, the Crow Tribe resubmitted a revised and updated Abandoned Mine Land Reclamation Plan. OSMRE is giving notice of its intent to close the period for comments on the Crow Tribe's Abandoned Mine Land Reclamation Plan.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 4:00 p.m. Mountain time November 25, 1988. Comments received after that date will not necessarily be considered in the decision process.

Public Hearing: A public hearing on the proposed Crow plan has been scheduled for 9:30 a.m. local time on November 14, 1988, in the conference room of the Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918. Any person interested in making an oral presentation at the hearing should contact Jerry R. Ennis, Field Office Director of the OSMRE Casper Field Office by 4:00 p.m. local time on November 9, 1988. If only three or fewer persons have so contacted Mr. Ennis, a meeting rather than a hearing may be held. A summary report of the meeting will be included in the Administrative Record.

ADDRESSES:

Written comments and requests for a hearing should be mailed to: Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918. Copies of the Crow plan and administrative record of the Crow plan are available for public review and copying at the OSMRE Offices and the Crow Office listed below, Monday through Friday, from 9:00 a.m. to 4:00 p.m. excluding holidays, Each requestor may receive, free of charge, one copy of the proposed plan by contacting OSMRE's Casper Field Office.

Crow AML Agency:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022

OSMRE's Field Office processing the plan:

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Mr. Larry C. Floyd, Supervisory AML Program Specialist at the Casper Field Office, (307) 261–5822.

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, the Crow Tribe submitted to OSMRE its proposed Abandoned Mine Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87. At that time OSMRE requested public comments on the adequacy of the proposed plan, 47 FR 21274–21276 (May 18, 1982). Following an internal review of the proposed plan and public comments, OSMRE met with the Crow Tribe to discuss certain revisions to its plan. In 1984, the Crow Tribe submitted a revised reclamation plan. Since OSMRE lacked authority under SMCRA to proceed further in the process for approving Tribal reclamation plans, OSMRE took no further action on the Crow Tribe's proposed plan. The public comment period, however, has remained open since 1984 pending authorizing legislation.

On July 11, 1987, the President signed the fiscal year 1987 supplemental appropriations bill which included authority for the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation (AMLR) programs without first having to obtain approval of Tribal surface mining regulatory programs. In response to this legislation, OSMRE notified the Crow Tribe that it was now able to consider final action on the proposed plan. The Crow Tribe has submitted additional revisions to the plan. This notice announces that OSMRE is in the process of finalizing its review of the Crow AMLR plan, and that the public comments period will close November 25, 1988.

Title IV of the Surface Mining Control and Reclamation Act, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribal or Federal law.

Title IV provides that if the Secretrary determines that a State or Tribe has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State or Tribal legislation to implement the provisions of Title IV, the Secretary may approve the State or Tribal program and grant to the State or Tribe exclusive reponsibility and authority to implement the provisions of the approved program.

OSMRE has received a proposed AMLR plan from the Crow Tribe. The purpose of this submission is to determine both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSMRE's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter 7, Subchapter R) as published in the Federal Register (FR) on June 30, 1982, 47 FR 28574–28604.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Secretary's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State or Tribal AMLR plan are found in 30 CFR 884.13 and 884.14. Additional information may be found under corresponding sections of the preamble to OSMRE's AMLR Program Final Rules as published in October 25, 1978 (43 FR 49932–49952).

The receipt of the Crow Tribe's plan is the first step in the process that will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands on the Crow Tribal Lands.

By submitting a proposed plan, the Crow Tribe has indicated that it wishes to be primarily responsible for this

program. If the submission, as hereafter modified, is approved by the Secretary, the Crow Tribe will have primary responsibility for the reclamation of abandoned mine lands on Crow Tribal Lands.

The Department intends to continue to discuss the Crow Tribe's proposed plan with representatives of the Tribe throughout the review process. All contacts between OSMRE personnel and representatives of the Tribe will be conducted in accordance with OSMRE's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

II. Discussion of Proposed Plan

The Crow AMLR plan is designed to apply the provisions of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 to reclamation of abandoned mines on the Crow Tribal Lands. The plan includes: discussions of criteria for selecting and ranking proposed projects; standards for acquiring, managing, and disposing of land under the AMLR program; public participation policy; and descriptions of proposed projects. The existing environment on the Tribal lands is also described in the plan.

The following constitutes a summary of the contents of the Crow Tribe's Reclamation plan submission:

(a) Designation of authorized Tribal Agency to administer the program.

(b) Tribe's General Counsel's opinion that the designated Agency has the legal authority to operate the program in accordance with the requirements of Title IV of SMCRA, 30 CFR Chapter 7, Subchapter R, and the Tribal AMLR plan.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives;

(2) Project ranking and selection procedures;

(3) Coordination with other reclamation programs;

(4) Land acquisition, management, and disposal;

(5) Reclamation on private land;

(6) Rights of entry; and

(7) Public participation in the program.

(d) Description of the administrative and management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program;

(2) Personnel staffing policies;

(3) Purchasing and procurement systems and policies; and

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the reclamation activities to be conducted under the Tribal AMLR plan discussing the known or suspected eligible lands and waters within the Tribal lands and including:

(1) a map showing the general location of known or suspected eligible lands and waters;

(2) a description of the problems occuring on these lands;

(3) how the plan proposes to address each of the problems;

(f) Description of the conditions prevailing on the different geographic areas of the Tribal lands where reclamation is planned, including:

(1) the economic base;

(2) significant aesthetic, historic or cultural, and recreational values; and

(3) endangered and threatened plants, fish, and wildlife and their habitat.

The Crow Tribal AMLR plan for Abandoned Mine Lands can be approved if:

1. The Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The Tribe has the legal authority, policies, and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSMRE AMLR Program provisions.

5. It is determined that the plan is in compliance with all applicable Tribal and Federal laws and regulations.

Date: October 19, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-24578 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM603 OC; FRL 3462-3]

Proposed Approval of a Revision to the District of Columbia Implementation Plan: Reasonably Available Control Technology Regulations For Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a new state regulation as a revision to the State Implementation Plan (SIP) for the District of Columbia. The purpose of this State regulation is to reduce volatile organic compound (VOC) emissions from a printing operation in the District's ozone nonattainment area. This action constitutes the implementation of Reasonably Available Control Technology (RACT) in the reduction of VOCs. This was a requirement of the District of Columbia's 1982 Ozone SIP, in order to receive an extension to achieve the ozone National Ambient Air Quality Standard (NAAQS) by December 31, 1987. EPA is proposing approval, as this SIP revision meets the requirements of the Clean Air Act and 40 CFR Part 51.

DATES: Comments must be received on or before November 25, 1988.

ADDRESSES: Comments may be mailed to David Arnold, Chief, Program Planning Section (3AM13), Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the locations listed below:

Mr. Don Wambsgans, Chief, Engineering Services Section, Environmental Control Division, 5010 Overlook Avenue, SW., Washington, DC 20032.

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Ms. Ivette Y. Alamo-Tirado at (215) 597-6863, of the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1985, the Mayor of the District of Columbia signed into law a major reorganization of the District's air pollution control regulations. As part of this reorganization, the District implemented a new regulation designed to reduce VOC emissions from a printing operation as part of their ozone control strategy (VOCs react in the presence of sunlight to form ozone in the lower atmosphere). The entire regulatory package was submitted to EPA on June 21, 1985, to be incorporated into the District's SIP. Because of the complexities of this package, the regulatory reform changes will be covered by another notice. This notice will only address the Reasonably Available Control Technology (RACT)

regulation for a major printing operation in the District of Columbia.

As part of the control strategy for attainment of the National Ambient Air Quality Standard (NAAQS) for ozone, the District revised its SIP to require controls representing the application of RACT for stationary sources of VOCs. The District of Columbia was required to develop VOC emission controls in order to receive an extension for achieving the ozone NAAQS. Section 172 of the Clean Air Act allows EPA to grant extensions to those States which could not demonstrate attainment of the ozone standard by December 31, 1982, if the State revised its air pollution control program regulations. The revised program had to include RACT emission limits for various types of VOC sources located in nonattainment areas. Since the District could not demonstrate attainment by December 31, 1982, for achieving the ozone NAAQS, it requested and received an extension to December 31, 1987, for achieving the ozone NAAQS. This extension was granted on December 16, 1981, (See 46 FR 61254). One of the conditions for approval was that the District would develop RACT regulations for all sources that are covered by Control Technique Guidelines (CTG), and for major non-CTG sources. The only non-CTG source identified in the District is the U.S. Bureau of Engraving and Printing (BEP). The District, with the assistance of the BEP, developed regulations to reduce plant VOC emissions by at least 50% by December 31, 1987. The regulations require the control of fugitive press emissions by reducing the VOC content in ink solvents, wiping solutions and dampening solutions, and of pressdryer emissions by installing and operating afterburners. The BEP is the only facility of its kind in the nation, warranting the determination of a source-specific RACT standard. There are no other sources to which this regulation will apply in the District. Further information related to this regulation can be found in the Technical Support Document (TSD). This notice will address the District's non-CTG regulation for printing operations.

Regulatory Discussion

The revision that the District of Columbia submitted to EPA on June 21, 1985, includes the reorganization and updating of the existing regulations. Also, included in the District's submittal are new regulations for the control of VOC emissions from a printing operation that is not covered by EPA's Control Technique Guidelines. The new regulations can be found in section 710 (Engraving and Plate Printing) in Title 20 of the District of Columbia Municipal Regulations.

Under these provisions the District's control strategy requires:

1. Reductions in the percent content of VOC for inks, wiping solutions and dampening solutions. The percent reductions in VOC, the respective printing units and compliance time schedules are listed in Table 1.

2. Reductions of fugitive emissions by the use of inking cylinders or other techniques wherever possible.

3. A 90% VOC reduction from two heatset ovens through the use of a control device, except for water-based solvents.

4. All forms of intaglio printing to be in final compliance by December 31, 1987.

5. Provisions for an alternative VOC emission reduction system(s).

6. Reductions due to improved maintenance and operational practices.

7. Reductions due to improved storage and disposal practices.

As stated in item 5 above, the District's control strategy allows for alternative VOC emission reduction system(s) provided that:

(a) The system(s) is demonstrated to have at least equivalent results as those of this rule, in limiting emissions of VOC.

(b) The alternative system(s) shall be approved by the Mayor. EPA is proposing to approve this equivalency provision as an available *mechanism* under the SIP whereby alternative controls may be established. However EPA approval of this mechanism will *not* constitute pre-approval of any alternative requirements set under the provisions. Before any such alternative can become incorporated into the SIP and thereby federally enforceable, it must be submitted to EPA and finally approved as a SIP revision.

At the time of final approval EPA intends to exercise its authority through section 114 of the Clean Air Act to require BEP to obtain and maintain the information that EPA needs to determine whether the source is in violation of the federally approved state implementation plan (SIP). Because recordkeeping is essential to determining continuous compliance with emission standards, EPA will impose periodic recordkeeping requirements (e.g., 1 month per quarter). Information required will include the percentage VOC content (by weight) and will apply to the inks and solutions as contained in the storage wells (fountains) of the printing units. This information will have to be developed on a daily basis for the period covered. EPA encourages the District to require similar recordkeeping requirements under District law.

EPA's authority under section 114 is not subject to a requirement for notice and comment; however, any party may comment on EPA's intentions regarding the exercise of section 114 authority in this way in the same way as comments are required for other aspects of this proposed action as outlined in the procedures set forth in this notice.

Proposed Action

EPA is proposing to approve 20 DCMR section 710 as part of the District of Columbia's SIP. This regulation implements the required RACT control program for printing operations in the District. A more detailed description of EPA's evaluation of the above regulatory change is presented in the Technical Support Document (TSD) that is available for public inspection at the EPA located listed in the above addresses.

EPA is soliciting public comments on this notice and on issues relevant to today's proposed actions. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the addresses section above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Date: August 2, 1988.

James M. Seif,

Regional Administrator.

TABLE 1.

Type of printing unit	VOC content of ink shall not exceed this percent after Dec. 31 of the year stated				VOC content of wiping solution shall not exceed this percent after Dec. 31 of the year stated				VOC content of dampening solution shall not excedd this percent after Dec. 31 of the year stated			
	1984	1985	1986	1987	1984	1985	1986	1987	1984	1985	1986	1987
Heatset intaglio	40	35	32	30	100	100	1	1	1	1	1	1
Non-heatset paperwipe intaglio	5	5	5	5	1	1	1	1	1	1	1	1
Non-heatset cylinder-wipe intaglio	25	20	12	15	1	1	1	1	1	1	1	1
Offset Lithography:												
Heatset	40	40	40	40	1	1	1	1	25	20	17	15
Non-heatset	35	35	35	35	1	1	1	1	25	23	21	20
Letterset	40	40	40	40	1	1	1	1	1	1	1	1
Letterpress					1	1	1	1	1	1	1	1
Flexography					1	1	1	1	1	1	1	1
Gravure					1	1	1	1	1	1	1	1

[1] Not applicable.

NOTES.—1. The percentage VOC content is by weight and applies to the inks and solutions as contained in the storage wells (fountains) of the printing unit. The VOC content does not include water.

2. The percentage VOC content shall be determined in accordance with Procedure B of test method ASTM D-2369-81; in lieu of testing the formulated inks and solutions, the individual components of the formulations may be tested and the VOC content of the formulations may be calculated there from.

3. The percentage water content shall be determined in accordance with test method ASTM D-3792-79 or test method ASTM D-4017-81.

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

Subpart J—District of Columbia

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.470 is amended by adding paragraph (c)(28) to read as follows:

§52.470 Identification of plan.

* * * * *

(c) * * *

(28) Section 710 of Title 20 of the District of Columbia Regulations is approved on condition that all alternative controls under §710.8 (or exemptions granted) are subject to a public hearing and submitted to EPA as a SIP revision. Such provisions are not effective until approved as a SIP revision.

[FR Doc. 88-24118 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3467-1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Dow Chemical, U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) for the control of volatile organic compound (VOC) emissions from Dow Chemical, U.S.A. in Gales Ferry, Connecticut. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with Section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 25, 1988. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, EPA Region I, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Connecticut's submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On May 21, 1987 and August 13, 1987, the Connecticut Department of Environmental Protection (DEP) submitted a SIP revision to EPA for parallel-processing. This revision consists of a proposed State Order No. 8011 which defines VOC control requirements for Dow Chemical, U.S.A. in Gales Ferry, Connecticut. These control requirements constitute RACT for this facility as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-2(ee), the DEP determines and imposes RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to EPA's Control Techniques Guideline (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of SIP Revision

Dow manufactures a variety of polymers and a polymer-based expanded foam at its Gales Ferry facility. Dow's operation consists of four separate manufacturing processes that all have emissions of VOC. The four manufacturing processes are the Polystyrene Manufacturing Process, the Acrylonitrile-Butadiene-Styrene (ABS) Resin Manufacturing Process, the Styrene/Butadiene (SB) Latex Manufacturing Process, and the Styrofoam® Manufacturing Process. The State Order imposes various control requirements on each of the processes.

I. Polystyrene Manufacturing Process

The Polystyrene Manufacturing Process produces polystyrene resins from styrene monomer using a continuous, thermal polymerization process. This process is regulated under subsections 22a-174-20(x) and 22a-174-

20(y) of Connecticut's regulations entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equpment" and "Manufacture of Polystyrene Resins," respectively. These RACT regulations were adopted pursuant to two of EPA's Group III CTGs entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (EPA–450/3–83–008)" and "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (EPA–450/3–83–006)."

The State Order requires Dow to demonstrate compliance with all of the provisions of subsections 22a–174–20(x) and 20(y) of Connecticut's regulations for this process. The State Order also imposes one additional requirement that is not contained in the two Connecticut regulations. It requires Dow to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process and not just the vents on the material recovery section as is required by Connecticut's polystyrene manufacturing regulation.

II. ABS Resin Manufacturing Process

The ABS Resin Manufacturing Process produces both polystyrene and ABS resins. The ABS resin is produced through the polymerization of acrylonitrile, polybutadiene rubber and styrene. The process is similar to the Polystyrene Manufacturing Process in that it also uses a continuous, thermal polymerization process. This process is also covered under the two Connecticut regulations adopted pursuant to EPA's Group III CTGs.

The State Order requires Dow to demonstrate the compliance with all of the provisions of subsections 22a–174–20(x) and 22a–174–20(y) of Connecticut's regulations. Additionally, as with the polystyrene operation, Dow is required to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process.

Further, the State Order requires Dow to adhere to hourly limitations on the emissions of acrylonitrile from two vents (the condenser vacuum vent and the extruder demister die exhaust vent) when this process produces the ABS resin. These limitations were developed pursuant to Section 22a–174–29 of Connecticut's regulations entitled "Hazardous Air Pollutants." The limitations that Dow will be required to meet are 0.198 pounds acrylonitrile per hour from the condenser vacuum vent and 0.199 pounds acrylonitrile per hour from the extruder demister die exhaust vent.

The ABS Resin Manufacturing Process at Dow is one of the acrylonitrile-emitting facilities that was evaluated under a pilot program described in the **Federal Register** on June 10, 1985 (50 FR 24319) in which the State and local air pollution control agencies were to analyze certain acrylonitrile emitting sources to determine if additional controls were warranted for the control of acrylonitrile as a toxic air pollutant. The requirements imposed on this process by the State Order represent, in part, the controls necessary for acrylonitrile under Connecticut's assessment of this pollutant in order to reduce the risk from exposure to this pollutant.

III. SB Latex Manufacturing Process

The SB Latex Manufacturing Process uses an emulsion medium to copolymerize styrene and butadiene. For this process, the State Order restates the requirements of a federally-enforceable new source review (NSR) permit that was issued to Dow by the Connecticut DEP in 1984. Dow was required to obtain the NSR permit when it undertook modifications to modernize and expand the capacity of the SB latex process. The NSR permit requires the installation of Best Available Control Technology (BACT) on the SB latex process; BACT has been defined as a refrigerated vapor recovery system on the butadiene storage sphere and a packed scrubber, with at least 91 percent efficiency, on the process equipment in the latex production facility.

IV. Styrofoam® Manufacturing Process

The Styrofoam® Manufacturing Process produces polystyrene foam. The process consists of mixing melted polystyrene with additives, injecting a blowing agent and extruding the material through a die where it expands and forms a rigid board. Historically, the blowing agent has consisted of both dichlorodifluoromethane (Freon 12) and methyl chloride, of which only methyl chloride is considered a VOC. Total usage of methyl chloride averaged approximately 740 tons per year for 1983 and 1984.

Dow has investigated the feasibility of installing add-on pollution control equipment to control the emissions from this process. However, since the majority of the VOC emissions are emitted as fugitives during the curing of the styrofoam®, Dow in its analysis of add-on control equipment found that add-on control equipment would be prohibitively expensive. Dow has submitted studies to the DEP which justify the infeasibility of add-on control equipment at its Gales Ferry plant. (Copies of those studies are included in the Technical Support Document prepared by EPA for this revision.)

Since add-on control equipment is believed to be infeasible at this point in time, the only remaining option for this process was the reduction and/or replacement of the VOC blowing agent. Dow has, for many years, been investigating the reduction and/or replacement of its present blowing agent in order to reduce VOC emissions. Although the use of most of the compounds investigated (including exempt VOCs, inert gases and chemical-decomposing blowing agents) has been found to be unsatisfactory for foam production, Dow has found that the replacement of the methly chloride blowing agent with a mixture of ethyl chloride and carbon dioxide results in an acceptable blowing agent with a corresponding reduction in VOC emissions. The substitution of the methyl chloride blowing agent has been found to be feasible for all but two of the products produced at the Gales Ferry plant. In recent years, these two products have accounted for approximately 12 percent of the total styrofoam® production at the plant.

As RACT, the State Order requires Dow to maintain an emission rate in terms of pounds VOC per one hundred pounds of polymer extruded for each product. The emission rate for each product represents the reduction from the historical emission rate that has been found to represent RACT for that product. The implementation of RACT on this process will result in approximately a twenty percent reduction in VOC usage.

The level of reduction which will be achieved at the proposed RACT level for this process is generally less than the level of reduction achieved by RACT for most VOC-emitting processes. However, EPA believes that the level of control being proposed for this process represents RACT at this point in time because Dow has demonstrated that no viable alternative control strategies exist which would result in greater reductions in VOC emissions.

EPA has reviewed the requirements of State Order No. 8011 and its compliance dates, and has determined that they constitute RACT for the four VOC-emitting processes at Dow Chemical U.S.A. in Gales Ferry.

EPA is proposing to approve DEP's proposed Order as a revision to the Connecticut SIP, and is soliciting public

comments. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's proposed State Order No. 8011 as a revision to the Connecticut SIP. The provisions of Connecticut's proposed State Order No. 8011 define and impose RACT for Dow Chemical, U.S.A. as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated October 9, 1987.

Editorial Note: This document was received at the Office of the Federal Register October 20, 1985.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88-24594 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3670/P469; FRL-3467-3]

Menthol; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of the pesticidal chemical menthol in or on beeswax and honey. This proposal, which eliminates the need to establish a maximum permissible level for residues of menthol in or on the commodities, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 8E3670/P469], must be received on or before November 9, 1988.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comment to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that Information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3670 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Indiana, Mississippi, and New Jersey and the U.S. Department of Agriculture.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of exemptions from the requirement of a tolerance for menthol, *l*-menthol or [5-methyl-2-(1-methylethyl)-cyclohexanol], in or on beeswax and honey when used in over-wintering bee hives.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the exemption is sought.

Menthol will be applied to over-wintering bee hives during the period from late August to early December when there is no surplus honey flow and daytime temperatures are expected to reach at least 60 °F. Menthol is a crystalline natural product of peppermint grass, and the properties and characteristics of menthol are well documented in various compendia. Menthol and peppermint oil (50 percent menthol), as natural extractives, are generally recognized as safe (GRAS) for their intended use, within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act. As such, menthol is used in a variety of foods ranging from 35 parts per million in nonalcoholic beverages to 1,100 ppm in chewing gum. Many plants, particularly mint grasses, have a natural content of menthol in their pollen. Therefore, honey will normally include a finite level of menthol as residue during the honey-flow season. Residue data indicate a level of 1 ppm of menthol from honey taken from untreated hives because of the ubiquitous presence of the material in the environment of man, animals, and plants and not more than 5.0 ppm from the proposed use in over-wintering beehives.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this

exemption request. This is the first exemption from the requirement of a tolerance for this pesticidal chemical.

Based on the above information considered by the Agency, the exemption from the requirement of a tolerance established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that the exemption be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means of early seasonal control of tracheal mites infesting bee hives.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3670/P469]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 18, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1092 is added to Subpart D, to read as follows:

§ 180.1092 Menthol; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical menthol in or on beeswax and honey when used in accordance with good agricultural practice in over-wintering bee hives.

[FR Doc. 88–24592 Filed 10–24–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6927]

Proposed Flood Elevation Determinations, Iowa; Correction

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 53 FR on June 9, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Elliott, Montgomery County, Iowa.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Managemeent Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Elliott, Montgomery County, Iowa previously published at 53 FR on June 9, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 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, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
East Nishnabotna River:	
Just upstream of State Highway 48	* 1,070
About 2,900 feet upstream from State Highway 48.	* 1,071
Coe Creek:	
About 0.38 mile upstream of mouth.	* 1,070
About 0.27 mile upstream of Burlington Northern railroad.	* 1,084
Tributary A:	
Just upstream of of mouth	* 1,070
Just upstream of Burlington Northern railroad.	* 1,075
Coe Creek Divergence:	
At convergence	* 1,073
At divergence	* 1,082

Issued: October 19, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–24565 Filed 10–24–88; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6927]

Proposed Flood Elevation Determinations, Kentucky; Correction

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 53 FR on June 9, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Knox County, Kentucky.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, 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 the Unincorporated Areas of Knox County, Kentucky previously published at 53 FR on June 9, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 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, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
East Fork Lynn Camp Creek:	
At mouth	* 1,071
Just downstream of Private Road (About 2100 feet upstream of Indian Creek Road)	* 1,100
Lynn Camp Creek:	
At county boundary	* 1,066
About 0.5 mile upstream of Back Street	* 1,089
Cumberland River:	
About 2 miles downstream of confluence of Swanpond	* 978
About 2 miles upstream of confluence of Ledger Branch	* 995
Cumberland River High Flow Diversion Channel:	
At confluence with Cumberland River	* 980
At divergence with Cumberland River	* 983
Richland Creek:	
Just downstream of School Street	* 986
About 2,100 feet upstream of Old Railroad Grade Road	* 986

Issued: October 19, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–24566 Filed 10–24–88; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–490, RM–6400]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KMDX–FM99, Inc., licensee of Station KMDX(FM), Channel 257A, Parker, Arizona, proposing the substitution of FM Channel 257C2 for Channel 257A and modification of its license accordingly, to provide that community with its first expanded coverage area FM service. The site coordinates for this proposal are 34–07–51 and 114–25–40.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners counsel, as follows: Peter Tannenald, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Conn. Ave., NW., Washington, DC 20036–5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–490 adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commissin consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24639 Filed 10–24–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–495; RM–6421]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Nanette Markunas to allot Channel 235A to Montauk, New York, as the community's second local FM service. Channel 235A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.1 miles) southwest to avoid a short-spacing to Station WOCB–FM, Channel 235B, West Yarmough, Massachusetts. The coordinates for this allotment are North Latitude 41–01–00 and West Longitude 72–00–00. channel 235A could be allotted to Montauk without the imposition of a site restriction if the counterproposal of Joan Orr in MM docket 87–484, 2 FCC Rcd 6793 (1987) to substitute Channel 236B for Channel 235B at West Yarmouth and modify Station WOCB–FM's license accordingly is adopted. See Public Notice Report No. 1431, January 27, 1988.

DATES: Comments must be filed on or before December 9, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nanette Markunas, Box 2576, Montauk, New York 11954 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–495, adopted September 28, 1988, and released October 18,1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules government permissible *ex parte* contacts.

For information regarding filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24640 Filed 10–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–496, RM–6346, RM–6469]

Radio Broadcasting Service; Boalsburg, Clearfield, Jersey Shore, Renovo, St. Marys, Tioga, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Kenneth H. Breon, Jr. and John K. Hogg, Jr. d/b/a Covenant Broadcasting Company propose the substitution of Channel 227B1 for Channel 228A at Jersey Shore, PA, and the modification of its license for Station WJSA–FM to specify operation on the higher powered channel, the substitution of Channel 254A for Channel 226A at Renovo, PA, and the substitution of Channel 234A for Channel 227A at Tioga, PA. Alternatively, Olivia T. Rennekamp and Cary H. Simpson d/b/a The Elk-Cameron Broadcasting Company, propose the substitution of Channel 230B1 for Channel 232A at St. Marys, PA, and the modification of its license for Station WKBI–FM to specify operation on the higher powered channel, the substitution of Channel 226B1 for Channel 230B1 at Clearfield, PA, and the modification of Clearfield Broadcasters' license for Station WQYX(FM) to specify the alternate channel, the substitution of Channel 229A for Channel 225A at Boalsburg, PA, and the substitution of Channel 254A for Channel 226A at Renovo, PA.

DATES: Comments must be filed on or before December 9, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John K. Hogg, Jr., Covenant Broadcasting Company, 262 Allegheny Street, Jersey Shore, Pennsylvania 17740 (Petitioner for Jersey Shore) and Anne Thomas Paxson, Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel to Elk-Cameron).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 88–496, adopted September 21, 1988, and released October 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Channel 227B1 can be allotted to Jersey Shore in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.0 kilometers (9.3 miles) east to avoid a short-spacing to Station WWSE, Channel 227B, Jamestown, New York, and to the pending application of Staion WMMR, Channel 227B, Philadelphia, Pennsylvania. The coordinates for this allotment are North Latitude 41–09–22 and West Longitude 77–05–17. Channel 234A can be allotted to Tioga and Channel 254A can be allotted to Renovo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction and can be used at the sites specified in the pending applications. The coordinates for these allotments are North Latitude 41–54–36 and West Longitude 77–08–06 and North Latitude 41–19–36 and West Longitude 77–45–00, respectively. Channel 230B1 can be allotted to St. Marys in compliance with the Commission's minimum distance separation requirements and can be used at Station WKBI–FM's present site. The coordinates for this allotment are North Latitude 41–24–56 and West Longitude 78–33–56. Channel 226B1 can be allotted to Clearfield, PA, in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to Channel 230B1 at St. Marys. The coordinates for this allotment are North Latitude 40–58–30 and West Longitude 78–20–00. Channel 229A can be allotted to Boalsburg in compliance with the Commission's minimum distance separation requirements and can be used at the sites specified in the pending applications. The coordinates for this allotment are North Latitude 40–46–30 and West Longitude 77–47–24. Canadian concurrence in these allotments is required since the communities are located within 320 kilometers of the U.S.-Canadian border.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24638 Filed 10–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–492, RM–6414]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Fun Radio Group, Inc., licensee of Station KDXR(FM), Channel 282C, Borger, Texas, proposing the substitution of Channel 282C1 for Channel 282C and modification of its license to specify operation on the Class C1 channel. The substitution can be made from the site specified in the construction permit (BPH–860312IF) at coordinates 35–30–33 and 101–38–54, which is 28.3 kilometers (17.6 miles) southwest of the Borger.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esquire, Peter H. Doyle, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–492, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24641 Filed 10–24–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017–8217]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would prohibit the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina, and Cape Canaveral, Florida. NOAA also proposes to redefine the area south of Fowey Rocks Light, Florida, wherein fish traps may not be placed. The intended effect of this proposed rule is to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource, and to clarify the regulations.

DATE: Written comments must be received on or before December 5, 1988.

ADDRESS: Copies of Amendment 1 and documents supporting this action may be obtained from and comments may be sent to: Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39463, August 3, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and trawls in the fishery. A prohibition on use of roller trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of very small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of the effects of trawls on live-bottom habitat and expressed the intent to address this issue via FMP amendment if evidence of significant damage was documented. Information is now avaialble to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problems of habitat damage and trawl harvest of undersized fish by prohibiting the use of trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina, and Cape Canaveral, Florida. A vessel possessing trawl gear and more than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2) would be defined as a participant in a directed fishery. It would be a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery harvested those fish in the EEZ.

In addition to the prohibition of trawl gear, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

Background

The FMP and supplemental habitat information in Amendment 1 confirm that live-bottom areas, characterized by low to moderate relief and presence of corals, sponges, and other sessile invertebrates, are the primary habitat for the major species in the snapper-grouper fishery. There is a limited amount of this habitat scattered irregularly over the continental shelf north of Cape Canaveral, Florida. The exact extent and distribution of these live-bottom areas is unknown. Current data suggest that 3 to 30 percent of the shelf contains suitable bottom for supporting the snapper-grouper fishery.

Experimental fishing cruises in the 1960's and 1970's established the feasibility of modifying trawls to harvest snapper-grouper species from live-bottom areas. Within the last 10 years, high-rise bottom trawls, often modified with large rollers to allow fishing over low-relief live-bottom areas, have been used to harvest species in the snapper-grouper fishery. Most vessels operating in this trawl fishery are converted shrimp vessels that target snapper-

grouper during the closed season for shrimp, generally January through March or April. The principal fishing areas are the productive live-bottom areas. The number of vessels participating in this seasonal trawl fishery has varied from 21 in 1981 to 2 in 1986; 7 vessels operated in 1987 and 1988.

Initial emergence of the trawl fishery for snapper-grouper species resulted in concerns and complaints from recreational fishermen, environmental groups, and other commercial fishermen regarding damage to live-bottom areas and substantial harvests of extremely small (i.e., six to the pound) vermilion snapper. The Council was concerned about these issues but was unable to address the habitat issue directly, because conclusive evidence of habitat damage was not available at that time. However, a minimum mesh size of 4 inches was implemented in 1984 to minimize the harvest of vermilion snapper less than 12 inches total length. Because small vermilion snapper comprised the majority of the catch in the trawl fishery, most trawl vessels left the fishery soon after the mesh-size requirement became effective. This temporarily mitigated concerns about habitat damage resulting from the trawl fishery. By 1987, the number of trawl vessels began to increase again and concerns about habitat damage reemerged. Based on additional evidence regarding the effects of trawling on live-bottom habitat and the continuing harvest of small vermilion snapper, the Council concluded that the use of trawls in the snapper-grouper fishery should be prohibited.

Evidence of Habitat Damage

The Council reviewed available information regarding effects of trawling on live-bottom habitat. A study conducted off the coast of Georgia analyzed the effects of a single pass of a roller trawl through a hard-bottom, sponge and coral community. Damage to individuals of all target species (i.e., sponges, corals, and octocorals) was observed immediately after trawling. The amount of damage varied according to species, but only barrel sponges exhibited a statistically significant reduction in density. Twelve months after the trawling, regeneration of tissue was sufficient to have rounded-off the tops of partially severed sponges and to have closed wounds on other sponges, but additional growth was limited; as indicated by some of the sponges being obviously shorter than before the trawling damage. The authors stressed, however that this damage resulted from a single pass of the trawls and that commercial fishing, with repeated trawling of the same area, would probably cause much greater damage to sponge and coral populations. The study further suggests that trawling without rollers, which are designed to allow the trawl to move over low-relief structures, would result in even more serious adverse impacts on bottom communities.

Information from research cruises further documents the effects of trawling on live-bottom habitat. Trawling conducted by a research vessel off the coasts of Georgia and South Carolina resulted in substantial removal of attached invertebrates. During 56 trawl tows made in live-bottom habitat, more than 5,000 pounds of sponges, soft corals, tunicates, bryozoans, and hydroids were collected, resulting in an average removal of over 90 pounds per tow. The scientific paper reporting these results emphasized that these figures only account for the bottom material entirely removed; the additional damage caused by the trawl doors, ground cables, and leg lines could not be determined. Numerous other cruise reports involving bottom trawling reference removal of sponges and corals, as well as damage to trawl gear used in live-bottom areas.

A study conducted in Australia provides an example of the potential long-term effects of bottom trawling in live-bottom habitats. This study compared trawl catches and the condition of bottom habitat in 1966, prior to the development of a commercial bottom trawl fishery, with data collected from the same area and time of year in 1982. Major changes observed were a conversion of areas with dense epibenthos (sponge, corals, hydroids, and gorgonians) to areas with sparse epibenthos and a resulting shift in catch composition from species associated with live-bottom (i.e., reef fishes) to species associated with open, sandy bottom. The data suggested that many species of fish are associated with particular types of bottom topography and invertebrate animals, such as sponges and soft corals. The study concluded that at moderate to low levels of fishing the main effect of trawling on abundance of bottom fishes is by alteration of the frequency and distribution of habitat types.

Based on the above information, the Council concluded that the trawl fishery for snapper-grouper in the South Atlantic is damaging the limited live-bottom habitat and is likely to have an adverse impact on the long-term viability of the snapper-grouper fishery. The Council's Habitat and Environmental Protection Policy declares the intent of the Council to protect, restore, and develop habitats upon which commercial and recreational marine fisheries depend, to increase their extent, and to improve their productive capacity for the benefit of present and future generations. The Council reviewed all relevant background information and concluded that continued habitat damage by trawl gear poses a significant risk to the long-term productivity of the snapper-grouper resource. Therefore, the Council is proposing to prohibit trawl gear in the snapper-grouper fishery in order to protect and restore habitats upon which commercial and recreational marine fisheries depend, as called for in recent amendments to the Magnuson Act and the Council's Habitat and Environmental Protection Policy.

Harvest of Undersized Vermilion Snapper

Vermilion snapper is one of the major species that is experiencing growth overfishing. The harvest of small vermilion snapper by the trawl fishery was discussed as a major problem in the original FMP. The FMP documented that the trawl fishery produced 83 percent of the commercial vermilion snapper landings in South Carolina and that 91 percent of these fish were significantly smaller than the desired 12-inch length. Numerous reports of substantial landings of trawl-caught vermilion snapper averaging one-sixth of a pound have been documented. Analysis in the FMP indicates that increasing the average size to 12 inches would increase yield by 34 percent.

The 4-inch mesh requirement implemented in September 1984 was designed to achieve a 12-inch average size for vermilion snapper, the principal component of the trawl fishery. The measure was effective initially, and trawl landings of vermilion snapper and the number of trawl vessels in the fishery declined significantly. This temporarily eased concerns about harvest of small fish and trawl damage to live-bottom habitat. However, in 1987 and 1988 the number of trawl vessels began increasing again. Confidential data available to the Council indicate that the 1988 trawl landings of vermilion snapper increased substantially and that the average size of fish was small. This apparent ineffectiveness of the 4-inch mesh requirement could be due to clogging of the meshes or possibly to illegal use of smaller-mesh liners in the trawl. Neither cause could be effectively resolved through enforcement of the existing regulation.

The Council believes that prohibition of the use of trawl gear in this fishery would minimize growth overfishing of vermilion snapper and increase potential yield from that species, in addition to protecting critical haitat. Vermilion snapper are harvested by commercial and recreational fishermen using hook-and-line gear; the average size and value per pound of these fish is consistently greater than that of trawl-caught vermilion snapper. In 1988, the average price per pound of hook-and-line caught vermilion snapper was $2.20, compared to $0.83 for trawl-caught fish. The Council has concluded that the losses resulting from prohibiting use of trawls would be exceeded by long-term benefits (i.e., increased yield and value) accruing to other traditional users of this resource.

The trawl prohibition is not applicable to waters north of Cape Hatteras because there is believed to be little, if any, live-bottom in this area due to different environmental and ecological conditions that exist north of Cape Hatteras. This prohibition is not applicable south of Cape Canaveral because fish trawling has not taken place within this area in the past, and the method of enforcing this regulation would unnecessarily impact the shrimp fishery in south Florida.

To provide effective enforcement of the prohibition on trawls in a directed snapper-grouper fishery between Cape Hatteras and Cape Canaveral, this proposed rule considers that a vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery aboard is in a directed snapper-grouper fishery. Further, it would be a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ. With this consideration and presumption, the prohibitions on trawls could be enforced dock-side instead of requiring expensive and relatively unavailable at-sea enforcement.

The Council evaluated the potential impacts of the 200-pound criterion on shrimp vessels that may occasionally land snapper-grouper as a result of a minor incidental catch or supplemental hook-and-line fishing. Landings data for North Carolina, South Carolina, and Georgia indicate that shrimp vessels do not land fish in the snapper-grouper fishery in excess of 200 pounds per trip. Information from Florida indicates that, from 1985 to 1987, in 8,396 shrimp trips, there were only three landings of snappers and groupers combined which were 200 pounds or more. The Council concluded that 200 pounds of fish in the snapper-grouper fishery per trip is a reasonable and realistic indicator of a directed snapper-grouper trawl fishery and is essential to the effectiveness of the management measure.

Catch statistics for North Carolina, South Carolina, and Georgia, supported by life history information on fish in the snapper-grouper fishery, indicate that more than 94 percent of fish in the snapper-grouper fishery are caught in the EEZ. Catch statistics for the east coast of Florida are less conclusive, since they include the entire east coast. North of Cape Canaveral, where the rebuttable presumption applies, a similarly high percentage is applicable. In any case, the catch by a trawler of more than 200 pounds of fish in the snapper-grouper fishery per trip from a State's waters between Cape Hatteras and Cape Canaveral is highly unlikely. The Council concluded that the rebuttable presumption is reasonable and realistic and that it is essential to the effectiveness of the management measure.

To ensure that trawlers surreptitiously targeting on fish in the snapper-grouper, fishery cannot avoid detection dock-side by transferring at sea such fish in excess of 200 pounds, this rule proposes to prohibit the transfer at sea of fish in the snapper-grouper fishery from a trawler. Transfers at sea are not a customary practice in the fisheries from Cape Hatteras to Cape Canaveral, and the proposed prohibition of transfers should not cause any change in fishing practices.

Additional Changes

In addition to the regulatory changes associated with Amendment 1, NOAA proposes additional changes to correct and clarify the regulations. The purpose and scope section (§ 646.1) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. The scope of any general provision or management measure would be specified in that provision or measure. The defined term *Fish in the snapper-grouper species* would be revised to *Fish in the snapper-grouper fishery* to conform to the term used in the regulations. The gear limitations section (§ 646.22) would be reorganized for clarify and to specify the geographic applicability of each limitation. The prohibition on fish traps shoreward of the 100-foot contour south of Fowey Rocks Light, Florida, would be revised to resolve two problems that have arisen in the practical application of the prohibition.

First, there are two charted pockets of water less than 100 feet deep which lie close to, but outside, the continuous 100-foot contour. In these two areas, it is unclear how the prohibition of placing traps "shoreward" of the 100-foot contour is to be applied. The larger of these areas lies off Sand Key, Florida, just west of the Key West main ship channel. It is 10.2 nautical miles (nm) long, ranges from 0.25 to 0.6 nm wide, and is separated from the continuous 100-foot contour by 0.1 to 0.4 nm. The smaller area is south-southeast of Halfmoon Shoal in the Florida Keys. It is less than 1.0 nm long by 0.2 nm wide and is no more than 0.1 nm from the continuous 100-foot contour.

The second problem results from the lack of a 100-foot contour line on the available chart of the Florida Keys between 82°40′ W. and 83°00′ W. longitudes. (The FMP and the regulations at 50 CFR Part 646 are not applicable west of 83°00′ W. longitude or north of the Florida Keys.) Unlike the Coast Charts (1:80,000 scale) applicable to the rest of the Florida Keys and coastline, National Ocean Service (NOS) chart 11434 shows soundings and contours in fathoms, rather than feet.

To address these problems and clarfiy the regulations, NOAA proposes to prescribe the line shoreward of which traps may not be placed as the 100-foot contour, shown on NOS charts 11462, 11452, 11442, and 11439, that is closest to the shore and that is continuous along the coast and Florida Keys from off Fowey Rocks Light to 82°40′ W. longitude. West of 82°40′ W. longitude, traps would be prohibited north of a line running from 24°24.86′ N. latitude, 82°40′ W. longitude (the western terminus of the charted 100-foot contour) to 24°28.6′ N. latitude, 83°00′ W. longitude. This line roughly equates to depths of 100 feet, is simple to plot, and terminates at 83°00′ W. longitude at the outermost limit of Florida's waters in the Gulf of Mexico off Loggerhead Key.

NOAA considers the proposed specification of the line shoreward of which traps may not be placed, described above, to be the least restrictive of the possible alternatives for addressing the problems. The proposal relieves a restriction, and its effects on fishing practices are expected to be minimal.

NOAA proposes other minor, technical changes to remove redundant language and correct references.

Analysis of Impacts

The prohibition of the use of trawl gear in the directed snapper-grouper fishery between Cape Hatteras and Cape Canaveral is not expected to result in s significant impact on a substantial number of small business entities in the

overall fishery. However, the initial effect on the relatively few vessels engged in the seasonal trawl fishery may be significant. The number of vessels in the trawl fishery is less than 1 percent of the total number of vessels in the snapper-grouper fishery. The number of trawl vessel speaked at 21 in 1980 and 1981; then varied between 14 and 18 from 1982 to 1984; declined to 2 in 1986; and increased to 7 in 1987 and 1988. Landings per vessel are not available, and much of the catch and value data on a State basis are confidential. However, total trawl landings and value peaked in 1981 at approximately 800,000 pounds and $600,000 and then declined steadily through 1986, when landings and value were less then 50,000 pounds and $50,000, respectively. Trawl production increased in 1988 to 104,825 pounds and $87,448, of which 70,061 pounds and $58,489 were derived from vermilion snapper.

Based on the seven vessels fishing in 1988 and the 1988 catch data, the prohibition would result in each vessel foregoing the harvest of 14,975 pounds of trawl-caught fish valued at $12,493. As previously noted, the primary source of revenue for these trawl vessels is the shrimp fishery; snapper-grouper trawling is supplemental during the 3 to 4-month closed shrimp season. The percent of total revenue derived from snapper-grouper trawling is not known precisely, but is believed to be relatively small. Further, the Council believes that the losses due to the trawl prohibition can be mitigated by these vessels using alternative gear (e.g., hook-and-line, longline, traps) to catch snapper-grouper species, or by participating in other fisheries, such as the calico scallop or sea scallop fisheries. The Council has concluded that the adverve impacts of the trawling prohibition on the relatively few affected vessels would be substantially exceeded by the benefits resulting from increased yield from the vermilion snapper resource and protection of habitat essential to the long-term viability of the snapper-grouper resource.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Coucil prepared a regulatory impact review which concludes that this rule will have the economic effects discussed above. A copy of the review may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the following reasons. An estimated seven vessels (small entities) used trawls to fish for fish in the snapper-grouper fishery for approximately 3½ months during the last year. Those seven vessels, which would be adversely impacted by this proposed rule, constitute less that 1 percent of the commercial vessels in the snapper-grouper fishery. Those vessels' incomes from trawling for fish in the snapper-grouper fishery constitute a small portion of their total income. They can substitute other gear for trawls to fish for fish in the snapper-grouper fishery or their trawls may be used in other fisheries. As a reult, a regulatory flexibility analysis was not prepared.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by responsible State agencies under Section 307 of the Coastal Zone Management Act.

The Council prepared an environmental assessment (EA) for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subject in 50 CFR Part 646

Fisheries, Fishing.

Dated: October 20, 1988.

William Matuszeski,

Executive Director.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

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

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in the South Atlantic EEZ.

§ 646.2 [Amended]

3. In § 646.2, in the definition for *Black sea bass trap*, the phrase "fishes in the management unit" is removed and the phrase "fish in the snapper-grouper fishery" is added in its place; and in the term *Fish in the snapper-grouper species*, the word *species* is removed and the work *fishery* is added in its place.

§ 646.4 [Amended]

4. In § 646.4, in the first sentence, the phrase "for YPR analysis" is removed; and in the second sentence, the opening work "Those" is removed and the word "fishermen" in capitalized.

5. In § 646.6, in paragraph (b) the reference to "§ 646.20" is revised to read "§ 646.20(a)"; in paragraph (k) the reference to "§ 646.22(b)(5)" is revised to read "§ 646.22(b)(4)"; paragraphs (h) and (i) are revised and new paragraphs (o) and (p) are added to read as follows:

§ 646.6 Prohibitions.

* * * * *

(h) Fish with explosives or poisons, as specified in § 646.22(a).

(i) Fish with a fish trap, except as specified in § 646.22(b).

* * * * *

(o) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina, and Cape Canaveral, Florida, as specified in § 646.22(c)(1).

(p) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(c)(2) and (3).

6. Section 646.22 is revised to read as follows:

§ 646.22 Gear limitations.

(a) *Explosives and poisons.* (1) Explosives (except explosives in powerheads) may not be used in the EEZ to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used in the EEZ to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b) *Fish traps.* (1) A fish trap in the EEZ is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The panel or door fasteners or hinges must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(2) A fish trap in the EEZ must meet all of the following mesh-size requirements (examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1):

(i) Two square inch minimum open mesh area;

(ii) One inch minimum length for shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh openings with more than four sides; and

(iv) One and nine tenths (1.9) inches minimum distance for diagonal measurement.

(3) A fish trap may not be placed in the South Atlantic EEZ south and west of 25°35.5′ N. latitude (off Fowey Rocks Light, Florida) to 80°40′ W. longitude shoreward of the 100-foot contour that is closest to the shore and continuous along the coast and Florida Keys, as shown on the latest editions of National Ocean Service charts 11462, 11452, 11442, and 11439. West of 80°40′ W. longitude, traps may not be placed in the South Atlantic EEZ north of a line connecting 24°24.86′ N. latitude, 82°40′ W. longitude and 24°28.6′ N. latitude, 83°00′ W. longitude. A fish trap so placed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(4) A buoy line attached to a fish trap possessed or fished shoreward of the outer boundary of the EEZ and south of 25°35.5′ N. latitude must be a minimum of 125 feet in length.

(c) *Trawl gear.* (1) In the EEZ between Cape Hatteras, North Carolina (35°15′ N. latitude) and Cape Canaveral, Florida (28°35.1′ N. latitude—due east of the NASA Vehicle Assembly Building), the use of trawl gear in a directed snapper-grouper fishery is prohibited. A vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery. It is a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ.

(2) A vessel with trawl gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(i) Taken in the EEZ between Cape Hatteras and Cape Canaveral; or

(ii) In the EES between Cape Hatteras and Cape Canaveral, regardless of where such fish were taken.

(3) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard, as specified in paragraph (c)(2) (i) and (ii) of this section.

[FR Doc. 88-24659 Filed 10-20-88; 4:43 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Use of Computers by Federal Agencies for the Filing and Releasing of Information

AGENCY: Administrative Conference of the United States.

ACTION: Proposed recommendation and notice of meeting.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on the use of computers by federal agencies for filing of information with the agencies and for releasing information in the possession of the agencies. Copies of the complete text of the draft, and of supporting reports, are available to interested persons.

DATE: The committee will meet to discuss the recommendation on November 8, 1988.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037. Telephone: 202–254–7065. Comments may also be submitted to this address.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on the use of computers by federal agencies for filing of information with the agencies and for releasing of information in the possession of the agencies. The proposed recommendation is based in part on a draft report by Professor Henry H. Perritt, Jr., of Villanova University School of Law, and a supplementary report on the Community Right-to-Know Act by Professor Susan G. Hadden of the University of Texas. The draft recommendation is summarized in this notice. Copies of the full text of the draft recommendation and of the draft reports are available from the Office of the Chairman of the Administrative Conference, which will respond immediately to any such requests.

The Conference's Committee on Governmental Processes will meet on Tuesday, November 8, 1988, for further consideration of the draft recommendations in the light of any comments that may be received. The meeting will take place at 9:30 a.m., at the offices of Covington and Burling, 1201 Pennsylvania Avenue, NW, Washington, DC. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 8 and 9, 1988. Comments should be sent to the address given above.

This notice of a committee meeting is given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463). Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Summary of the Draft Recommendation

The draft recommendation is amended to guide agencies that keep and use information in electronic form, when electronic acquisition or release of the information from or to the public is necessary to the agency's mission or is required by the Freedom of Information Act. The recommendation addresses the following subjects:

- Federal agency obligations under the Freedom of Information Act with respect to information in electronic form;
- Principles for deciding which systems are desirable for electronic acquisition and release of federal agency data;
- Appropriate roles for the public and private sectors in electronic systems for acquisition or release of federal agency data;
- Factors to be considered in evaluating costs and benefits for decisions about federal electronic information systems;
- Monopoly over public information;
- Format of electronic information; and
- Electronic means of participation in rulemaking and adjudication.

Dated: October 21, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–24722 Filed 10–24–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Street and Shelter Night (S-Night).

Form Number: D–117.

Type of Request: New.

Burden: 498 hours.

Avg Hours Per Response: 5 minutes.

Needs and Uses: This form will be used to collect specific shelter information needed to count the homeless population during the 1990 decennial census. Census supervisors will use the data to plan assignments and prepare enumerators to enumerate homeless shelters.

Affected Public: State or local governments, Non-profit institutions.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 20, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-24650 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-07-M

Commercial Space Advisory Committee; Closed Meeting

AGENCY: Office of the Associate Deputy Secretary.

SUMMARY: Pursuant to the Federal Register Notice of June 16, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

TIME AND PLACE: November 9, 1988 from 2:00 p.m. to 6:00 p.m. The meeting will take place in the Secretary's Conference Room, Suite 5842, U.S. Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7064, Washington, D.C. 20230, Telephone: 202/377-8125.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552(c)(4), and (9)(B). The discussions are likely to disclose: privileged or confidential commercial information and premature disclosure of information which would be likely to significantly frustrate the implementation of proposed agency actions and confidential recommendations to be made to the President of the United States. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce.)

Date: October 21, 1988.

Richard H. Endres,

Director, Office of Commercial Space Programs.

[FR Doc. 88-24767 Filed 10-21-88; 4:17 pm]

BILLING CODE 3510-BP-M

International Trade Administration

[A-401-004]

Certain Carton-Closing Staples and Staple Machines from Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of Antidumping Duty, Administrative Review.

SUMMARY: In response to requests by two respondents, the Department of Commerce initiated an administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden. One firm, Grytgols Bruks AB, withdrew its request for review. This review covers the remaining firm and the period December 1, 1985 through November 30, 1986. The review indicates the existence of dumping margins during the period for that firm.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 9321) the final results of its last administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden (48 FR 38250, December 20, 1983). Two respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on January 20, 1987 (52 FR 2123). One firm, Grytols Bruks AB, withdrew its request for review. The Department has now conducted that administrative review for the remaining firm in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain carton-closing staples in strip form and certain non-automatic carton-closing staple machines. Carton-closing staples are U-shaped wide crown fastening devices used to secure and close the flaps of corrugated paperboard cartons. They are commonly referred to as wide-crown staples and are available in either 50 or 60 piece sticks of 2,000 or 2,500 per box.

Staples are made of steel, most often copper coated or galvanized. Carton-closing wide crown staples differ from office, desk-type, and other industrial staples primarily in the width of the crown and wire dimensions. Carton-closing wide crown staples have crown widths of 1¼ inches or more. The wire cross-sectional dimensions vary from .037-.040 inches by .074-.092 inches.

Non-automatic wide crown carton-closing staple machines use the wide crown staples described above and can be divided into two categories, hand-held top closing staple machines and free-standing bottom closing machines.

Such staples and staple machines are currently classifiable under items 646.2000 and 662.2065, respectively, of the Tariff Schedules of the United States Annotated. These products are currently classifiable under item numbers 8305.20.00 and 8422.30.90 of the Harmonized System.

The review covers one manufacturer/exporter of certain carton-closing staples and staple machines from Sweden and the period December 1, 1985 through November 30, 1986.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed ex-factory, f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States.

We made adjustments, where applicable, for ocean freight, U.S. and Swedish inland freight, marine insurance, brokerage fees, U.S. customs duties, and, in the case of ESP, selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for discounts, and differences in credit expenses and packing. We made further adjustments for indirect selling expenses when ESP was the basis of U.S. price. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Josef Kihlberg AB:		
Staples	12/85-11/86	1.18
Staple Machines	12/85-11/86	1.52

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments by Josef Kihlberg AB. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to Josef Kihlberg AB or any other previously reviewed firm, a cash deposit of 1.18 percent shall be required on shipments of staples and a cash deposit of 1.52 percent shall be required on shipments of staple machines. These deposit requirements are effective for all shipments of Swedish carton-closing staples and staple machines entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: October 19, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-24647 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-071]

Viscose Rayon Staple Fiber from Finland; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

On August 5, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5255.

SUPPLEMENTARY INFORMATION:

Background

In August 5, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 29508) the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under HS item numbers 5504.10.00 and 5504.90.00.

The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results are unchanged from those presented in the preliminary results of review, and we determine that no margin exists for Kemira Oy Sateri for the period March 1, 1987 through February 29, 1988.

The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for in section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required. This deposit requirement is effective for all shipments of Finnish viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: October 19, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-24648 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-601]

Steel Wire from New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On July 28, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand. We have now completed that review and determine the total bounty or grant for the period June 16, 1986 through June 30, 1986 to be 6.22 percent *ad valorem* and for the period July 1, 1986 through June 30, 1987 to be 3.60 percent *ad valorem*.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 28428) the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand (51 FR 31156, September 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of New Zealand galvanized carbon steel wire, round carbon steel wire coated or plated with zinc, 0.06 inch or more in diameter. Such merchandise is currently classifiable under Tariff Schedules of the United States Annotated item numbers 609.4135 and 609.4325 and Harmonized System item numbers 7217.12.50, 7217.22.10 and 7217.32.10.

The review covers the period June 16, 1986 through June 30, 1987 and 11 programs:

a. Export Performance Taxation Incentive;
b. Export Market Development Taxation Incentive;
c. Sales tax exemptions or refunds;
d. Export Suspensory Loan Scheme;
e. Export marketing assistance;
f. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS);
g. Preferential treatment to exporters in granting import licenses;
h. Research and development incentives;
i. Regional development investment incentives;
j. Special industrial development allowances;
k. Export and development financing from the Development Finance Corporation.

Analysis of Comments Received

We gave interesed parties an opportunity to comment on the preliminary results. We received written comments from one exporter, New Zealand Wire Industries Limited (NZWI).

Comment 1: NZWI contends that, although Hurricane Wire Products Limited, another exporter, stated in its response to the Department's questionnaire that it had received benefits under the Export Market Development Taxation Incentive (EMDTI), the New Zealand government advised the Department, on May 3, 1988, that Hurricane had in fact received no benefits under EMDTI. Since the Department received this information well before the publication of its notice of preliminary results (July 28, 1988), it should change Hurricane's benefit from this program to zero.

Department's Position: We received Hurricane's response to our questionnaire on May 13, 1988. The response indicated that Hurricane received benefits under EMDTI. Despite the later claims of the New Zealand government and NZWI that Hurricane did not receive EMDTI benefits, we did not receive a copy of the New Zealand government's letter, dated May 3, 1988 (advising us that Hurricane, in fact, had not received benefits under EMDTI) until September 13, 1988, well after publication of the preliminary results (July 28, 1988). Apparently, this letter was not filed with the Central Records Unit in Room B-099, as required by our regulations. *See* 19 CFR 355.34(a)(1) (1988). We cannot rely on the September 13 submission for several reasons. First, it would be unjust for us to consider a submission filed so late in the proceeding since we would deprive other parties an effective opportunity, to comment. *See Final Results of Antidumping Duty Administrative Review; Steel Jacks from Canada*, 52 FR 32957 (1987). Second, the New Zealand government's submission on September 13, 1988 was not received in time to permit proper analysis and verification of the information. *See* 19 CFR 355.39 (1988). As a result, we determine that we cannot rely on the May 3 letter but must rely on Hurricane's original submission.

Comment 2: NZWI contends that the Department erred by using Hurricane's expenditures for a fifteen-month period to calculate an annual benefit from the EMDTI program for cash deposit purposes. The Department should have ascertained Hurricane's actual expenses for fiscal year 1988.

Department's Position: We disagree. We did not use expenditures for a 15-month period. Rather, we prorated the 15-month figure to obtain an annual figure. We then prorated the annual figure according to the EMDTI tax rates in effect in fiscal year 1987. We allocated the result over Hurricane's fiscal year 1987 exports to obtain the benefit.

The cash deposit rate is based on the most recent information in the administrative record. The period for this review is June 16, 1986 through June 30, 1987. All of the information that we collected in this review concerns that period. We will obtain information for fiscal year 1988 in the next review, if one is requested.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986, and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 16, 1986 and exported on or before June 30, 1986, and 3.60 percent of the f.o.b. invoice price on all shipments exported on or after July 1, 1986 and on or before June 30, 1987.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.70 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: October 6, 1988.

[FR Doc. 88-24649 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers; Meeting

AGENCY: National Institute for Standards and Technology, DoC.

ACTION: Notice of public meeting with partially closed session.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Tuesday, November 15, 1988, from 8:30 a.m. to 5:00 p.m. The Board of Overseers is composed of nine members appointed by the Secretary of Commerce. The purpose of this meeting is to review the activities of the Malcolm Baldrige National Quality Award Program in order to assist the Board of Overseers in reporting to the Secretary of Commerce and Director of the National Institute of Standards and Technology as required by law.

DATES: The meeting will convene November 15, 1988, at 8:00 a.m. and adjourn at approximately 4:30 p.m. The open session of the meeting will commence at 10:30 a.m. and adjourn at 12:00 Noon.

ADDRESS: The meeting will be held in Room 1851, Department of Commerce, Herbert Hoover Building, 14th Street and Constitution Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 6, 1988, that the meeting of the Board of Overseers will be partially closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Ernest Ambler,

Director.

Date: October 19, 1988.

[FR Doc. 88-24568 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Michael Galgano From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On July 8, 1988, Michael Galgano (Appellant) filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the New York Department of State to the Appellant's consistency certification for 87-754 U.S. Army Corps of Engineers Permit Application No. 87-1351-L1 for his proposed construction of a timber bulkhead with backfill in Meyers Pond, Town of Southampton, Suffolk County, New York.

Appellant requested a stay of this proceeding. A six-month stay, which will automatically expire on March 25, 1989, or at the request of either party, whichever comes first, has been granted. The stay may be extended for good cause. If the appeal is perfected by the filing of Appellant's brief upon the expiration of the stay, public comments will be solicited in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: October 19, 1987.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 88-24589 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for certain sublevels in Groups I and II are being adjusted, variously, for swing and special shift.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 62, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 1988.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other

vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 27, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category	Adjusted 12-month limit [1]
Sublevels in Group I	
225/317/326	21,983,481 square yards.
369–L [2]	2,548,318 pounds.
611	1,355,165 square yards.
613/614/615/617	12,465,500 square yards.
619/620	10,895,462 square yards.
625/626/627/628/629	15,936,163 square yards.
670–H [3]	33,616,354 pounds.
670–L [4]	78,372,721 pounds.
Sublevels in Group II	
331	509,199 dozen pairs.
333/334	83,434 dozen.
335	98,879 dozen.
338/339	768,975 dozen.
340	759,946 dozen.
341	401,935 dozen.
342	211,942 dozen.
345	99,270 dozen.
347/348	1,069,088 dozen of which not more than 527,174 dozen shall be in Category 347 and not more than 845,536 dozen shall be in Category 348.
433	13,486 dozen.
443	50,438 numbers.
633/634/635	1,567,421 dozen of which not more than 1,046,608 dozen shall be in Categories 633/634 and not more than 755,927 dozen shall be in Category 635.
636	357,129 dozen.
638	2,013,798 dozen.
639	4,797,195 dozen.
640	3,403,855 dozen of which not more than 1,734,969 dozen shall be in Category 640–Y. [5]
641	756,218 dozen of which not more than 264,677 dozen shall be in Category 641–Y. [6]
642	677,967 dozen.
647	2,746,835 dozen.
648	3,216,960 dozen.
651	442,186 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[3] In Category 670–H, only TSUSA numbers 706.4125 and 706.3405.

[4] In Category 670–L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[5] In Category 640–Y, only TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.

[6] In Category 641–Y only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110 and 384.9120.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–24615 Filed 10–24–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Professional Evaluation, Department of Defense Dependents Schools; SD Form 778; and OMB Control Number 0704–0035.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 11,000.

Annual Burden Hours: 5,500.

Annual Responses: 11,000.

Needs and Uses: Information provides means for evaluating the applicant's abilities and personal traits which may predict success in an overseas teaching assignment with the Department of Defense Overseas Dependents Schools.

Affected Public: Individuals or households.

Respondents Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

October 19, 1988.

[FR Doc. 88–24575 Filed 10–24–88; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Voluntary Questionnaire, Department of Defense Dependents Schools; SD Form 779; and OMB Control Number 0704–0223.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 10 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 5,500.

Annual Burden Hours: 917.

Annual Responses: 5,500

Needs and Uses: Responding to the questionnaire is voluntary. Information provides a means of evaluating the effectiveness of Federal EEO programs, including handicapped applicants, and DoDDS recruiting efforts.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

October 19, 1988.

[FR Doc. 88–24576 Filed 10–24–88; 8:45 am]

BILLING CODE 3810–01–M

Record of Decision: Camp Ripley, MN

AGENCY: National Guard Bureau, DOD/Minnesota Department of Military Affairs.

ACTION: Record of Decision for Implementation of the Master Plan for Mission Expansion/Multiple

Construction at Camp Ripley, Minnesota.

SUMMARY: The National Guard Bureau and the Minnesota Department of Military Affairs decision is to implement the thirty-four actions which make up the Camp Ripley Master Plan. All thirty-four actions were examined and evaluated separately and cumulatively in the Environmental Impact Statement (EIS) in support of the Master Plan for Camp Ripley.

For the following actions, the present site alternative as described in the EIS is selected as the location for the Master Plan projects:

(1) Solid waste transfer station;
(2) Aerial gunnery range;
(3) Drop zone improvements; and
(4) Infantry squad battle course.

For the following actions, the alternative site alternative as described in the EIS is selected as the location for the Master Plan projects:

(1) Heating facilities;
(2) Petroleum, oil, and lubricant (POL) storage and dispensing facility;
(3) Armory;
(4) Combined support maintenance shop;
(5) Warehouse, C15;
(6) Warehouse, C16; and
(7) Demolition, land mine, and booby trap range.

The Regional Maintenance Training Site, Armory, and State Military Education Center will be consolidated into one location with other existing logistical support facilities in the southwest portion of the cantonment area. The remaining projects will be constructed at the locations proposed in the Camp Ripley Environmental Impact Statement.

SUPPLEMENTARY INFORMATION: In response to the emphasis that has been placed on successful and prompt integration of reserve and active armed forces in the event of a national emergency, the Minnesota Department of Military Affairs (DMA) has prepared a Master Plan for Mission Expansion/Multiple Construction at Camp Ripley, Minnesota. This plan provides for the continuation and development of Camp Ripley Army National Guard Training Site as required by the National Guard Bureau. The purpose of the Master Plan is to ensure effective use of the site and economical use of funding for development in an environmentally sound manner.

The implementation of the Master Plan actions will provide adequate logistical facilities throughout the cantonment area (the urban-like portion of the camp), range upgrades for the training area, educational facilities, and facilities to support additional aviation training. Implementation of the Master Plan actions will increase usage of the Training Site by approximately 4 percent or 17,000 mandays. This increased usage is attributed to the development of educational facilities. The decision to implement the Master Plan is preferable to the no action alternative since five of the proposed actions will have beneficial environmental impacts. The remaining twenty-nine actions were evaluated as having an insignificant impact or no known impact under the no action and action alternatives. Therefore, the decision to implement these actions was based on the need to improve the Camp facilities to meet training mission requirements and provide for operation of the Camp in an efficient and logistically preferable manner.

In the five environmentally preferable actions, the continued use of existing facilities or practices would cause significant adverse environmental impacts. These adverse impacts would be mitigated by the implementation of the proposed Master Plan:

(1) Flood damage to existing facilities would be mitigated by the installation of the proposed storm sewer system.

(2) Significant adverse impacts to air quality, water resources, and energy resources would be mitigated by construction of the petroleum, oil, and lubricant (POL) storage facility.

(3) The risk of significant ground water contamination would be mitigated by constructing a crash rescue burning pit with proper lining, fuel storage and recovery facilities.

(4) Violation of state solid waste management regulations would be averted by the construction of a properly sized and enclosed solid waste transfer station which would promote economical disposal of solid waste.

(5) The risk of significant ground water contamination would be mitigated by the proposed upgrades to the aerial gunnery range which would provide secondary containment for refueling areas.

In the EIS, alternatives to individual actions included: no action, present site, alternative site, and relocation. The no action alternative represented the continuation of existing conditions. The present site alternative was considered whenever facilities or activities for upgrade or construction were currently available at Camp Ripley. The alternative site pertains to an action if the pertinent facilities or activities were currently available at Camp Ripley and an alternative site within the Camp was possible. The relocation alternative meant relocating actions or activities at Camp Ripley from an off post location.

A Notice of Intent to prepare the joint National Guard Bureau/Minnesota DMA Environmental Impact Statement was published in the **Federal Register** on July 22, 1986, and in the Minnesota Environmental Quality Board (EQB) Monitor on July 14, 1986. The document was prepared in accordance with Title 40 Code of Federal Regulations (CFR) Part 1500, Minnesota Rules Chapter 4410, and Army Regulation 200–2 Environmental Effects of Army Actions.

A scoping meeting was held on July 31, 1986, with written comments being received until August 15, 1986. Concerns raised during the scoping process were addressed in the EIS and included effects on air quality, noise physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and socioeconomic resources. The impacts associated with the proposed actions were addressed individually and cumulatively with respect to effects upon the environment.

A Notice of Availability of the Draft EIS was published in the March 18, 1988, **Federal Register** and in the March 21, 1988, EQB Monitor. A public meeting was held at Camp Ripley on April 12, 1988, to receive comments on the Draft EIS. Written comments were accepted between March 18, and May 2, 1988. The Final EIA was prepared in compliance with Federal and State laws, and included comments received at the public meeting, written comments, and the responses to those comments. A Notice of Availability of the Final EIS appeared in the **Federal Register** on September 2, 1988, and EQB Monitor on September 5, 1988.

The EIS process is not a substitute for the Federal, State, and local permitting and approval processes. When each action is implemented, it will be subject to the appropriate permits and approvals. Opportunities for public input will be provided as required by the standard permitting procedures. Separate detailed environmental documentation will be prepared and submitted for individual actions impacting wetlands on the National Wetlands Inventory. The use of the good construction practices outlined in the Draft EIS will be stipulated in construction contracts. The implementation of these construction practices will mitigate impacts from fugitive dust, erosion, or sedimentation. Asbestos will be disposed of according to Federal and State laws and regulations.

Camp Ripley will continue to implement Army programs which

provide for the mitigation, monitoring, and management of environmental resources. These programs will include: the Installation Compatible Use Zone program for noise; the Integrated Training Area Management program; and Land Condition Trend Analysis program to preserve training lands; and a Natural Resources Management program.

The decision to implement the Camp Ripley Master Plan is warranted because the actions identified as environmentally preferred will be implemented and national security will be enhanced through more efficient operation and training at Camp Ripley with insignificant environmental impacts. The economic stability of the immediate area would be enhanced by the cumulative beneficial socioeconomic effect of the implementation of the Camp Ripley Master Plan.

The National Guard Bureau and the Minnesota Department of Military Affairs, by this Record of Decision, incorporate their commitment in the EIS to employ all practicable means to minimize the impacts of the implementation of the Camp Ripley Master Plan on the environment.

Eugene R. Andreotti,

Brigadier General, MN ANG, The Adjutant General, Minnesota.

William A. Navas, Jr.,

Brigadier General, GS Deputy Director, Army National Guard.

[FR Doc. 88-24613 Filed 10-24-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Scoping Meetings for a Supplement to the Draft Environmental Impact Statement (EIS) for the Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797), and Star Falls (FERC No. 5797) Projects

October 20, 1988.

In accordance with the notice issued July 15, 1988, by the Federal Energy Regulatory Commission (FERC), the FERC staff will prepare a Supplement to the Draft EIS (Supplement) prior to issuing a final EIS. The Supplement will address only the new circumstances and information made available since the Draft EIS was issued and new staff alternatives which were described in public meetings held on August 18 1988, in Twin Falls, Idaho.

The FERC staff will hold scoping meetings to: (1) Present environmental issues to the public and experts familiar with the Snake River Projects which are currently expected to be covered in the Supplement; (2) receive input form the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues which merit treatment in the Supplement; and (5) identify issues that do not merit treatment in the Supplement. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meetings and assist FERC staff with the determination of issues to be addressed in the Supplement.

An issue that was not addressed in the Draft EIS is dam safety at Milner. The FERC staff met with the Applicant for the Milner Project on October 5, 1988, to discuss the nature an extent of the existing problems. This issue will be discussed in the scoping meetings.

Two scoping meetings will be held on November 2, 1988. A meeting will be held at the Holiday Inn, 3300 Vista Avenue, Boise, Idaho, from 8:00 a.m. to 12:00 noon. A meeting will also be held at the Holiday Inn, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho, from 7:00 p.m. to 10:00 p.m. To assist the scoping meeting attendees in preparing for and participating in the session, the FERC staff has prepared the enclosed document entitled "Scoping Document Supplement". Copies of data, reports, or other documentation supporting positions taken by attendees regarding the scoping document supplement should be provided to the FERC staff during the scoping meetings. For further information, contact Kathleen Sherman at (202) 376-9527.

Scoping Document Supplement

Twin Falls Project, FERC No. 18-001
Milner Project, FERC No. 2899-003
Auger Falls Project, FERC No. 4797-001
Star Falls Project, FERC No. 5797-001

October 1988.

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1. Introduction

The staff of the Federal Energy Regulatory Commission (FERC) has determined that issuance of licenses for four proposed projects on the mainstem Snake River, the Twin Falls, Milner, Auger Falls, and Star Falls Projects, would constitute a major Federal action significantly affecting the quality of the human environment. The FERC staff, therefore, issued a Draft Environmental Impact Statement (DEIS) in November, 1987. Due to new circumstances, new information that became available after the DEIS was issued, and new staff alternatives, FERC issued a Notice of Intent to Prepare a Supplement to the DEIS (Supplement) on July 15, 1988. Public meetings were held in Twin Falls, Idaho on August 18, 1988, to discuss the new circumstances, information and staff alternatives. The Supplement will include only sections of the DEIS that have changed, and sections which will be added.

The FERC staff will not hold scoping meetings to: (1) Present to the public and experts familiar with the Snake River Projects environmental issues expected to be covered in the issues presented; (3) clarify the significance of issues; (4) identify additional issues that merit treatment in the Supplement; and (5) identify issues that do not merit treatment in the Supplement. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meetings ands assist FERC staff with the determination of issues to be addressed in the Supplement.

2. Proposed Actions and Alternatives

2.1 Description of Proposed Actions

The locations of the four proposed projects are shown on Figure 1.

2.1.1 *Amended Star Falls Project*

—Changes in project configuration include: a larger and higher dam located upstream of the original diversion site (50-foot-high dam versus 20-foot-high weir); a powerhouse (1 MW unit) located at the dam; a buried penstock on the north side of the river instead of a canal on the south side of the river; a powerhouse (35.8 MW unit) located on the north side of the river instead of the south side and upstream of the original powerhouse site.

— The size of the reservoir would increase, with 5.2 miles of free-flowing river inundated instead of 3.5 miles with the original proposal.

— Access to the project would be provided by upgrading the existing road that leads to Star Falls from the north canyon rim, instead of constructing a new access road from the south canyon rim as originally proposed.

— Project operation would be changed from run-of-river (inflow equals outflow) to store-and-release during the irrigation season and run-of-river during the nonirrigation season; the applicant is also considering peaking operations for power generation during the nonirrigation season.

2.2 Supplemental Mitigative Measures Proposed by Applicants

Supplemental mitigative measures were proposed for the Milner Project and for the Twin Falls Project in filings dated March 31, 1988. Mitigative measures for the amended Star Falls Project are proposed in the draft amended application for license filed on September 9, 1988, which has also been provided to the agencies for their comments; the application for amendment to license is expected to be filed on November 17, 1988.

2.2.1 *Milner Project*

—Minimum flows for fisheries are proposed to be 58 cfs leakage from the dam during the irrigation season, with an additional 92 cfs during the nonirrigation season, for a total of 150 cfs.

—Upland wildlife habitat would be developed and donated to Idaho Department of Fish and Game.

—New proposals for recreation include: building an interpretive center with picnic facilities; building additional water ski dock(s) on Milner reservoir; further development of public facilities at a Bureau of Land Management Wildlife Habitat Management Area; building a kayak launch; and developing a communication network to quickly inform kayakers of flow conditions below Milner dam.

2.2.2 *Amended Star Falls Project*

—Minimum flows for fisheries in the bypassed reach are proposed to be 160 cfs during the irrigation season and 250 cfs during the nonirrigation season.

—Cofferdams, berms, check dams, and sediment ponds would be used to control erosion and sedimentation and protect water quality.

—Ramping rates would be used during reservoir drawdown and filling to reduce impacts on aquatic resources.

—An off-site mitigation area for aquatic, terrestrial, and recreational resources would be located on a 3/4-mile-long reach of Rock Creek located about 12 miles from Twin Falls.

—An on-site developed recreation area would include parking, toilets, picnic facilities, fire pits, campsites, and put-in facilities for whitewater boating.

—Releases from the dam would be provided for whitewater boating downstream of the powerhouse during the summer.

Interpretive signs would explain the historical significance of Star Falls and Caldrin Linn.

—A series of several viewpoints would be made along the inner canyon wall.

2.2.3 *Twin Falls Project*

—Release of flows over Twin Falls to enhance visual quality would be provided to coincide with periods of greatest recreational use of the project area.

—Two alternative plans have been proposed for flows to be released over Twin Falls; Plan A would provide 140 cfs during daylight hours on weekends and holidays all year, and Plan B would provide 140 cfs during daylight hours on weekends and holidays for September to March and provide 140 cfs daily during daylight hours from April to August.

—A small weir would be constructed at the top of the falls to direct the water over both sides of the falls, to create a similar visual impression from a flow of 140 cfs as is seen with flows of 300 and 500 cfs; the weir would not be visible to people viewing the falls.

2.3 Alternative Mitigative Measures Proposed by the Staff

2.3.1 *Target Flows*

—Target flows may be set for a variety of resources, including fisheries, water quality, visual quality, and recreation.

—The State Water Plan specifies zero flow below Milner dam, so in order to be consistent with this comprehensive plan, target flows in the bypassed reach of the Milner Project, can only be provided when there is water available in excess of irrigation needs.

—A target flow at the other projects would be equivalent to the minimum flow which would otherwise be recommended for the bypassed reach; all inflow must be released up to the target flows, which must be met or exceeded before a powerhouse at the bottom of a bypassed reach could be operated.

2.3.2 *Comprehensive Water Block (CWB)*

—The objective of the CWB is to provide water for target flows at the projects when it is available, so that irrigation needs would be met and consistency with the State Water Plan can be maintained.

—The CWB is the combined amount of water needed to provide target flows for mitigation of project-specific and cumulative impacts for all of the projects; the size of the CWB would vary with the number of projects that are licensed and constructed.

—Each project that is licensed and constructed would provide a subblock to the CWB; the size of individual subblocks would be different for each project since target flows would be based on what is needed to mitigate impacts at each specific project.

—The size of the CWB would vary from year to year depending on the amount of flow in the river and the availability of water in excess of irrigation needs.

—Licensees could potentially lease water for the CWB from the Water Supply Bank, described in Policy 4B of the State Water Plan, which also states that use of the Water Supply Bank created by Idaho Code 42–1762 shall be encouraged; water has been available for rental in all years since the bank began operation in 1979, and is expected to be available in sufficient quantities to meet the needs of the CWB in most if not all years in the future, based on current staff estimates.

—Target flows to be set for the projects will recognize the physical limitations of the system so that they will not interfere with irrigation operations or flood low-lying areas.

—Flows to be released for project-specific target flows could be accounted for when the water is released from American Falls reservoir, and measured below Milner dam.

—The CWB could be an accounting mechanism, for licensees to equitably share the responsibility for providing mitigative flows, since water which is released from American Falls reservoir would flow through all the proposed projects.

2.4 Alternatives to the Proposed Action

2.4.1 *Milner Project Staff Alternative*

—One or more small turbines would be installed at the dam in addition to the large turbine proposed for the powerhouse to be located 1.6 miles downstream of Milner dam.

2.4.2 *Auger Falls Staff Alternative*

—Penstocks leading from the proposed canal to the powerhouse, would be shifted towards the south side of the river and placed in a natural "niche" in the face of the cliffs in order to minimize blasting that would be needed to excavate the trenches for the penstocks; placing the penstocks along the existing road to the Rock Creek powerhouse and constructing the Auger Falls powerhouse next to the existing powerhouse will also be evaluated, as this would eliminate blasting of the cliffs.

—Access to the powerhouse would be from the end of the road leading to the existing Rock Creek powerhouse located on the Snake River near the south end of the cliffs, instead of constructing a new access road along the river and leading to the north end of the cliffs as originally proposed.

—The transmission line could be relocated to follow the existing Rock Creek transmission line and eliminate a river crossing for the Auger Falls transmission line.

3. Environmental Impact Issues

3.1 Project-Specific Issues

3.1.1 *Milner Project*

3.1.1.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.1.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Development of a monitoring plan to conduct tests for heavy metals and other toxic substances in any river sediments or other unconsolidated deposits that would be removed or otherwise distributed by dredging, constructing, or operating project facilities; and to safely remove and dispose of any toxic substances discovered.

—Historical changes in water quality of Milner Reservoir resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.1.3 Fisheries Resources

—Development of the proposed fisheries mitigation and enhancement plan.

—Fish entrainment and measures to reduce it.

—Development of a ramping rate.

—Effects of decreased flows in the winter on icing conditions.

3.1.1.4 Recreation

—Public access to, and egress from, the river for whitewater boaters.

—Effects of scheduling flow releases for whitewater boaters at specific times during the early spring and fall when most desirable boating flows are available.

—Enhancement of recreational opportunities at Milner reservoir.

3.1.1.5 Visual Resources

—Visual effects of reduced flows throughout the bypassed reach on river recreationists.

—Visual effects of project facilities.

3.1.1.6 Cultural Resources

—Based on a cultural resources management plan developed and agreed to by the applicant and the Idaho State Historic Preservation Officer (SHPO), the impacts of the project on the historic Milner dam, a site listed on the National Register of Historic Places, are not adverse if the plan is implemented; the DEIS described the effect as adverse, so the Supplement will revise the cultural resources section to make reference to the plan, include the SHPO's statement of no adverse effect, and to include the rationale for the statement.

3.1.2 *Amended Star Falls Project*

3.1.2.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.2.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.2.3 Fisheries Resources

—Development of the proposed fisheries mitigation plan.

—Fish entrainment and measures to reduce it.

—Development of a ramping rate to protect the "critical habitat areas".

3.1.2.4 Vegetation and Wildlife Resources

—Elimination of most waterfowl nesting habitat within the project reach of the Snake River.

—Loss of winter habitat for pheasants and gray partridge.

—Loss of 27 acres of wetlands and 84 acres of mixed sagebrush and grassland.

—Development of a mitigation plan for riparian habitat and associated wildlife.

3.1.2.5 Recreation

—Effects of providing whitewater release flows to coincide with the time of day boaters put-in and take-out of the 14-mile-long Murtaugh reach located downstream of Star Falls.

—Access to the river for whitewater boaters that portage around or put-in immediately downstream of Star Falls.

—Effects of sudden increases in flow from peaking operation on safety of downstream recreationists.

—Potential increase in private and commercial summer whitewater boating opportunities in the Murtaugh Reach created by scheduled flow releases for boaters.

3.1.2.6 Visual Resources

—Visual effects of reduced flow over Star Falls.

—Visual effects of project facilities in contrast to the natural appearance of the area on recreationists.

3.1.2.7 Cultural Resources

—Impacts of the project on archeological and historic sites within the new impact areas of the project, and the cultural resources management plan to avoid or mitigate impacts, needs to be determined.

—Principal new impact areas are the proposed transmission line which is now in a different location than the original project configuration, and the areas along the project reservoir that are affected by the proposed increase in the pool elevation; a cultural resources survey should be conducted of these areas, and the impacts to several known archeological sites along the shoreline that may have been avoided or

otherwise protected under the original proposal should be reassessed.

—Impacts to Star Falls, a historic natural feature listed in the National Register of Historic Places needs to be reassessed given the relocation of the project dam.

—Comments of the SHPO on Star Falls based on the new dam site location should be incorporated into the Supplement, to include a statement of effect (no effect, no adverse effect, or adverse effect); the effect was previously described as adverse in the DEIS and by the SHPO.

—A cultural resources management plan to avoid or mitigate impacts should be developed and agreed to by the applicant and the SHPO and incorporated into the Supplement.

3.1.3 *Twin Falls Project*

3.1.3.1 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.3.2 Fisheries Resources

—Fish entrainment and measures to reduce it.

—Development of a ramping rate using site-specific information.

—Development of the habitat enhancement plan for Vinyard Creek.

3.1.3.3 Recreation

—Accommodation of any increased recreational use that occur as a result of increased viewing opportunities of the falls.

—Enhancement to viewing platform.

3.1.3.4 Visual Resources

—Visual effects of reduced flows over Twin Falls.

—Visual effects of project facilities.

3.1.3 *Auger Falls Project*

3.1.3.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.3.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.3.3 Fisheries Resources

—Fish entrainment and measures to reduce it.

—Development of a ramping rate using site-specific information.

—Fish passage at Auger Falls.

3.1.3.4 Vegetation and Wildlife Resources

—Development of additional mitigation for riparian habitat.

3.1.3.5 Recreation

—Utility of the proposed lengthy pedestrian access located away from the river, to enhance recreational opportunities at the project site.

3.1.3.6 Visual Resources

—Effects on the views of the canyon from important viewing locations along the canyon rim, especially in regard to the one-half mile setback requirements for a greenbelt.

—Visual effects of reduced flows over Auger Falls.

—Visual effects of project facilities on river recreationists.

3.2 Cumulative Impact Issues

3.2.1 Proposed Projects and Alternatives

—Reassessment of cumulative impacts on all resource areas, including new mitigative measures proposed by the applicants and the staff, for projects as proposed and staff alternatives.

4. Comprehensive Planning

4.1 Idaho State Water Resources PLan

4.1.1 Interim Protected Rivers

—Designates a portion of the Snake River within the study area as an interim protected river, pursuant to section 42–173H of the Idaho Code, which includes the Star Falls and Auger Falls project sites.

—The Milner Project is upstream of the designated reach; the Twin Falls Project is not affected because any designation of waterways as interim protected rivers or protected rivers does not affect the continued operation or relicense of existing hydropower projects.

4.2 Northwest Power Planning Council

4.2.1 Protected Areas

—A protected area within the reach of the Snake River that includes the four proposed projects begins at Vinyard Creek, which discharges into Twin Falls reservoir, and extends to the mouth of the Snake River.

—Designated protection is for wild resident fish habitat, wintering waterfowl, and bald eagles.

—The proposed Milner and Star Falls Projects are upstream of Vinyard Creek, and would not affect the protected area.

—The proposed Auger Falls Project is within the protected area.

—The proposed Twin Falls Project is exempt from the protected areas designation because it is located at an existing dam.

5. Information Requested

Federal, state, and local resource agencies and other interested groups and individuals are requested to forward to FERC, or present at the FERC scoping meetings, any information that they believe will assist the FERC staff in conducting an analysis of environmental impacts related to the Snake River hydroelectric projects or any of the alternatives identified.

a. information, data, or professional opinion that may contribute to defining the scope and identifying significant environmental issues;

b. identification of and information from any other EIS or similar study (previous, ongoing, or planned) relevant to the proposed projects and alternatives; and

c. existing information and data that would aid in the characterization of baseline physical/chemical, biological, and socioeconomic environments.

To be useful in preparation of the Supplement, the requested input should be received no later than December 31, 1988. Information can also be submitted prior to the scoping meetings. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,Washington, DC 20426. All filings must clearly show the project names and number, (e.g., the Twin Falls Project, FERC No. 18–001; the Milner Project, FERC No. 2899–003; the Auger Falls Project, FERC No. 4797–001, and

the Star Falls Project, FERC No. 5797–001) on the first page.

6. Proposed Outline for Supplement

Note: Section numbers are not consecutive, because they reflect the section numbers in the DEIS which are being changed as a result of new information since the DEIS was issued.

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Lois D. Cashell,

Secretary.

[FR Doc. 88–24631 Filed 10–24–88; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary

Intention to Prepare an Environmental Impact Statement on Waste Management Activities at the Oak Ridge Reservation and to conduct a Public Scoping Meeting

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on waste management activities at the DOE Oak Ridge Reservation (ORR) in Oak Ridge, Tennessee.

SUMMARY: The Department of Energy announces its intention to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), as amended, to assess the potential environmental impacts of the proposed activities for managing several kinds of wastes generated at the ORR, and for the construction and operation of new radioactive waste management facilities at the ORR. The new facilities, which will differ in the type of waste they accept, are proposed to be used for treatment and storage of hazardous and mixed waste and for the disposal of solid low-level radioactive waste (LLW). The DOE proposes to initiate construction of interim LLW facilities in July 1990 and operation in September 1991. These interim facilities will be on a smaller scale than permanent facilities and will allow DOE to evaluate the effectiveness of several options for the treatment and disposal of wastes.

The proposed comprehensive waste management strategy will ensure the continuation of present operations while simultaneously initiating a technology development and demonstration program for treatment, storage and disposal of current and future wastes generated at the ORR. The proposed strategy includes the following components: (1) Waste stream identification and evaluation; (2) waste minimization; (3) on-site storage/ treatment of Resource Conservation and

Recovery Act (RCRA) hazardous wastes and mixed wastes; (4) technology demonstrations; (5) delisting, detoxification and mobility reduction; and (6) waste disposal. Alternative waste management strategies and technologies will be evaluated, and will include, but not be limited to, alternatives for construction and operation of new waste management facilities.

Preparation of the EIS is intended to assure that potential environmental impacts associated with all aspects of the proposed action, including closure and institutional control of disposal sites, are documented and are factored into the decisionmaking with regard to the proposed project and facilities.

The DOE invites interested parties, officials, organizations and the public to submit comments or suggestions to be considered in defining the scope of the EIS. In addition, interested agencies, officials, organizations and the public are invited to participate in a scoping meeting to be held in Oak Ridge, Tennessee, on November 9, 1988, to assist DOE in identifying potentially significant environmental or other issues related to the development, construction and operation of the new waste disposal facilities. When the Draft EIS is completed, a Notice of Availability will be announced in the **Federal Register** and local news media, and comments will be solicited again from all interested parties. Comments on the Draft EIS will be considered in preparation of the Final EIS.

ADDRESS: Written comments or suggestions as to the scope of the Draft EIS and requests to speak at the scoping meeting may be submitted to W. Nelson Lingle, Program Manager, Research and Waste Management, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8621; (615) 576–5580.

General information on the NEPA process as followed by DOE may be obtained from Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–4600.

DATES: To ensure that the full range of issues related to this proposal are addressed and all significant environmental issues are identified, comments and suggestions on the proposed scope of the EIS are invited from all interested parties. Written comments postmarked by November 23, 1988, will be considered in preparation of the Draft EIS. Comments postmarked after that date will be considered to the maximum extent practicable. Oral and written comments will be considered in preparation of the Draft EIS.

A scoping meeting will be held at the American Museum of Science and Energy, Oak Ridge, TN, on November 9, 1988. Requests to speak at the meeting should be received by November 1, 1988.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to select a comprehensive strategy for hazardous, mixed, and LLW on the ORR and to address, in detail, the disposal of LLW.

At present, most of the waste is reduced in volume and either put into interim storage until new, environmentally acceptable facilities are operational, or used to demonstrate disposal technology. The Low-Level Waste Disposal, Development and Demonstration (LLWDDD) Program has developed a performance-based disposal strategy that accounts for the existing environmental conditions on the ORR and considers the potential hazard of LLW to public health and safety. The proposed action is to construct and operate three separate types of radioactive waste disposal facilities on the ORR. The first facility would dispose of slightly contaminated radioactive waste in an industrial-type landfill (Class I) and will cause an effective whole-body dose equivalent of less than 10 mrem/yr at the time of facility closure. The second facility would be dedicated to LLW that would decay to levels not to exceed an effective whole-body dose equivalent of 10 mrem/yr by the end of a 100 year period of active institutional control (Class II). The third type of facility would dispose of long half-life radioactive wastes that may be treated to achieve the 10 mrem/yr effective whole-body dose equivalent at the time of facility closure (Class III). Engineered intruder protection for Class III facilities will reasonably assure that an inadvertent intruder would not be likely to receive exposures in excess of regulatory limits. Wastes not meeting the Class I, II, or III requirements for on-site disposal (Class IV) would be shipped to an off-site disposal facility.

Potential sites for radioactive waste disposal facilities have been reviewed and surveyed, and environmental characterization studies are underway for each. The sites are located in the Bear Creek Valley, Chestnut Ridge, and Melton Valley areas of the ORR. Each site is potentially useful for disposal for one or more classes of low-level waste.

In addition to LLW, hazardous and mixed wastes result from operations and remedial activities at the ORR. The primary goal of each installation's waste management program is to manage these waste streams in a cost-effective manner that affords protection of the human health and the environment. Although the proposed strategy calls for a concentrated effort in improving mixed waste management operations, many of the technologies implemented for mixed wastes also may be applicable to the RCRA hazardous waste. The main elements of the strategy for hazardous and mixed waste are minimization, characterization of waste stream, storage/treatment, delisting, detoxification, and mobility reduction and disposal.

Preliminary Identification of Alternatives

Alternatives that have been identified for consideration in the EIS are both general (for waste management strategy) and specific (for low-level waste). In general, the alternatives are:

- No action (continuation of the current waste management practices);
- New waste management disposal strategies, including:

(a) Shipment of all wastes generated on the ORR to another DOE waste disposal facility,

(b) Development of disposal facilities at a new DOE waste disposal site not on the ORR,

- Alternative treatment, storage, minimization strategies, technologies, and sites on the ORR; and
- Alternative combinations of the above.

For LLW, alternative sites, technologies, and facility designs are being considered. Alternative disposal sites on the ORR and off-site have been investigated and will be evaluated as part of the EIS. Several technologies to be considered included waste treatment, conditioning, packaging, and disposal technologies that would be applicable to the disposal of low-level radioactive waste generated on the ORR. Alternative facility designs have not been identified, but will be defined by DOE as the conceptual designs for the proposed facilities are developed.

Identification of Environmental Issues

The following issues have been identified for analysis in the Draft EIS. This list is presented to facilitate public comments on the scope of the EIS and is not intended to be all inclusive, nor a predetermination of impacts.

1. The potential for exposure of the public and workers to radiation during all phases of operation of the facilities and during off-site treatment;

2. The potential for exposure of the public to radiation during and following

the institutional custodial care phase of monitoring such facilities;

3. The environmental, safety and health effects of credible accidents and radioactive releases;

4. The effectiveness of various waste management procedures in retaining radionuclides within the disposal unit;

5. The impact of disposal site operations on ground and surface waters; and

6. The cumulative impacts of all of the proposed waste management activities.

comments and Public Scoping Meeting

All interested parties are invited to submit written comments or suggestions concerning the scope of issues that should be addressed in the Draft EIS and to attend a scoping meeting in which oral comments and suggestions will be received. Oral and written comments will be considered in preparation of the Draft EIS.

The DOE will establish procedures governing the conduct of the meeting. It will not be conducted as an evidentiary hearing, and those who choose to make oral presentations will not be subject to any cross-examination. The following procedures will be used to provide the DOE with as much pertinent information as possible, as many views as can be reasonably obtained, and to provide interested parties with equitable opportunity to express their views:

1. Those individuals desiring to make oral comments should mail their requests to Mr. W. Nelson Lingle at the above listed address. DOE reserves the right to arrange the times and schedules of presentations to be heard and to establish procedures governing the conduct of the meeting. By November 1, 1988, interested individuals and organizations should notify DOE in writing of their desire to speak. Those persons wishing to speak on behalf of an organization should identify their affiliation in their request. Also, persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called to present their comments, if time permits. To assure that all persons wishing to make presentations can be heard, a 5 minute limit for each individual has been established.

2. If, subsequent to the meeting, any person or organization desires to provide further information for the record, it must be submitted to Mr. Lingle at the address listed above and postmarked by November 23, 1988. Comments received after that date will be considered to the extent practicable.

3. A transcript of the meeting will be taken and made available for public review at the locations given below.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS for review and comment when it is issued, should notify Mr. Lingle at the address listed above. When the Draft EIS is complete, its availability will be announced in the **Federal Register** and in the local news media, and comments will be solicited again.

Related NEPA Documentation

NEPA documents have been, or are being, prepared for other activities on the Oak Ridge Reservation that are related to, but not within the scope of the proposed action. These documents are:

1. U.S. Department of Energy, Final Environmental Impact Statement, Incineration Facility for Radioactively Contaminated Polychlorinated Biphenyl and Other Wastes, Oak Ridge Gaseous Diffusion Plant, Oak Ridge, TN, DOE/EIS–0084, 1982. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, Revised Final Environmental Assessment Y–12 RCRA Closure Initiation Projects, Oak Ridge, TN, DOE/EA–0362, June 1988. U.S. Department of Energy, Washington, DC.

3. U.S. Department of Energy, Draft Environmental Assessment of the Shipment of Oak Ridge National Laboratory's Contact-Handled Transuranic Waste to the Waste Isolation Pilot Plant, October 1987. U.S. Department of Energy, Washington, DC.

Copies of these and other documents referenced in this notice that are planned to be used in preparing this Draft EIS, along with other background information, will be available for public inspection at the following locations:

1. U.S. Department of Energy, Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue SW., Washington, DC 20585.

2. Oak Ridge Federal Building Reading Room, 200 Administration Road, Oak Ridge, TN 37830.

3. Oak Ridge Public Library, Civic Center, Oak Ridge, TN 37716.

4. Clinton Public Library, 18 South Hicks Street, Clinton, TN 37716.

5. Kingston Public Library, Community Center, Kingston, TN 37763.

Issued at Washington, DC, October 18, 1988.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–24570 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Environmental Impact Statement On Proposed Siting, Construction and Operation of New Production Reactor Capacity, Additional Information on the Public Scoping Process

AGENCY: Department of Energy (DOE).

ACTION: Amendment to notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: DOE amends the NOI previously published in the **Federal Register** (53 FR 36094, September 16, 1988) by: (1) Announcing an additional scoping meeting to be held near Pocatello, Idaho on November 18, 1988; (2) establishing deadlines for preregistering to speak at all public scoping meetings; (3) changing the DOE point of contact for requesting a copy of the draft EIS; and (4) clarifying the DOE proposal to analyze the environmental effects of each new production reactor (NPR) technology alternative "at 125% of expected tritium requirements." This amendment is intended to provide all interested parties with additional information on the DOE proposal and the EIS public scoping process to assure full and informed participation.

DATES: A additional public scoping meeting will be held at the following time and place new Pocatello, Idaho:

Date: November 18, 1988

Place: Little Tree Inn, 133 West Burnside, Chubbuck, Idaho

Times: 9 a.m.–5 p.m. and 7 p.m.–10 p.m.

For those persons who wish to make oral statements at one of the public scoping meetings, the deadlines for preregistration are as follows:

Meeting location date	Preregistration deadline	Sponsoring site
Twin Falls, ID/Nov. 10, 1988.	November 4, 1988.	Idaho.
Idaho Falls, ID/Nov. 14, 1988.	November 8, 1988.	Idaho.
Boise, ID/ Nov. 16, 1988.	November 10, 1988.	Idaho.
Chubbock, ID/Nov. 18, 1988.	November 14, 1988.	Idaho.
Richland, WA/Nov. 29, 1988.	November 22, 1988.	Hanford.
Aiken, SC/ Nov. 29, 1988.	November 22, 1988.	Savannah River.
Spokane, WA/Dec. 1, 1988.	November 25, 1988.	Hanford & Idaho.
Augusta, GA/Dec. 1, 1988.	November 25, 1988.	Savannah River.

Meeting location date	Preregistration deadline	Sponsoring site
Savannah, GA/Dec. 5, 1988.	November 29, 1988.	Savannah River.
Portland, OR/Dec. 6, 1988.	November 30, 1988..	Hanford.
Columbia SC/Dec. 7, 1988.	December 1, 1988..	Savannah River.
Seattle, WA/ Dec. 8, 1988.	December 2, 1988.	Hanford.

The end of the EIS public scoping period (December 15, 1988) remains unchanged. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Requests to speak at the public scoping meetings and written comments on the scope of the EIS should be submitted to:

Mr. Peter J. Dirkmaat (Idaho Site), U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–6666

or

Mr. Tom Bauman (Hanford Site), U.S. Department of Energy, Richland Operations Office, 823 Jadwin Avenue, Room 157, Richland, WA 88352, (509) 376–7501

or

Mr. S.R. Wright (Savannah River Site), U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (803) 725–3957

FOR FURTHER INFORMATION CONTACT: The person to contact to receive a copy of the draft EIS (when published) has been changed to:

Mr. Jim Davis, Director, Office of Environment, Office of New Production Reactor (DP–50), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20858, (202) 586–5966

SUPPLEMENTARY INFORMATION: On September 16, 1988, DOE published a NOI in the **Federal Register** announcing the Department's intent to prepare an EIS on the siting, construction and operation of NPR capacity. The NOI provided background information on the proposed action, reasonable alternatives, and a list of potential issues to be considered in preparation of the EIS. In the NOI, DOE invited all interested parties to submit written comments on the proposed scope of issues to be analyzed in the EIS and announced a schedule of public scoping meetings where persons may present oral comments on the scope of the EIS. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS.

This amendment to the NOI announces the addition of a public scoping meeting near Pocatello, Idaho; establishes deadlines for preregistering to speak at all the scoping meetings; and changes the person to contact to receive a copy of the draft EIS. The establishment of the preregistration deadlines is intended to allow the Department sufficient time (three working days) to prepare and post the lists of preregistered speakers for each meeting location. Persons wishing to speak at the scoping meetings who do not register before these deadlines may still register at the door of a particular meeting and be given an opportunity to speak after all preregistered speakers have presented their comments, as time permits. Written and oral comments will be given equal weight in the scoping process.

This amendment also provides a clarification of the sentence in the NOI, which stated "For the purposes of the EIS analyses, all technologies will be analyzed at 125% of expected tritium requirements." For purposes of the EIS analysis, all alternative NPR technologies are to be conceptually designed to attain 100% of expected tritium requirements. However, DOE proposes that the EIS anaylysis of environmental effects will assume a margin of 25% over calculated source terms to provide a conservative bounding case for each reactor technology. This margin was selected to ensure that the environmental impacts analysis would allow a measure of conservatism for the uncertainty in source terms.

During EIS public scoping process, this proposal for bounding of potential environmental impacts is being further evaluated by the Department.

Signed in Washington, DC, this 18th day of October, 1988, for the United States Department of Energy.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–24572 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Grants; National Geothermal Association

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant—National Geothermal Association, Grant No. DE–FG07–89ID12832.

SUMMARY: The NGA convene a seminar, with tours, to promote U.S. geothermal goods and services. The U.S. Department of Energy (DOE), Idaho Operations Office (ID), intends to negotiate on a noncompetitive basis with the National Geothermal Association (NGA)—P.O. Box 1350, Davis, CA 95617.

NGA will develop and convene, in conjunction with the California Energy Commission and other organizations, a two day seminar and two days of tours to promote the international sale of U.S. goods and services through the explanation and demonstration of U.S. geothermal small power plant technology to foreign national representatives. Support of the NGA in this task will promote the international sales of U.S. geothermal goods and services, continue to keep the U.S. the focal point for the export of U.S. goods and services to the international market, and help strengthen the U.S. leadership in geothermal development.

The anticipated amount of the Grant $5,000. NGA is obtaining support from other parties also to fund the total anticipated cost of $33,240. A Determination of Noncompetitive Financial Assistance (DNCFA) has been approved in accordance with DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) and (D); (B) the activity(ies) is (are) being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or planning to conduct such an activity(ies); (D) the applicant has exclusive domestic capability to perform the activity successfuly based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

Public response may be addressed to the contract specialist below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402—T. Wade Hillebrant (208) 526–0547.

J. P. Anderson,

Acting Director, Contracts Management Division.

[FR Doc. 88–24571 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement of United States and Canada on Civil uses of Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following contract:

Contract Number: DE–SC05–88UE07158, for a short-term fixed commitment contract for the supply of 258.5 kilograms of uranium, enriched to 19.75 percent in the isotope uranium-235, to Atomic Energy of Canada, Ltd. (AECL). The material is to be fabricated at AECL into fuel ultimate for use in a research reactor in Choongam, the Republic of Korea, operated by the Korean Advanced Energy Research Institute.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sonner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 18, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88–24660 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement of United States and European Atomic Energy Community on Peaceful Uses of Atomic Energy

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/CA(EU)–15, for the transfer of 500 grams of uranium enriched to 19.95 percent in the isotope uranium–235 from France to the Chalk River National Laboratories in Canada, for suitability tests for fuel element production for the NRU research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 18, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88–24661 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Availability of the Record of Decision to Construct, Operate, and Maintain the Third AC Intertie

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability of record of decision.

SUMMARY: The Bonneville Power Administration (BPA) has decided to construct, operate, and maintain the Third AC Intertie in the States of Washington and Oregon.

The Project will increase the capacity of the existing AC Intertie about 1600 megawatts (MW), from about 3200 MW to about 4800 MW through: (1) The signing of a technical agreement between BPA, Portland General Electric, and Pacific Power and Light (PP&L) with California parties; (2) the improvement of existing facilities in Washington and Oregon; (3) the exercise of a BPA option to acquire 50 percent of the incremental capacity of PP&L's existing Malin-Meridian line; (4) the building of a Southern Oregon substation; (5) the building of two 2-mile loop lines from the substation to BPA's existing Grizzly-Malin line and to PP&L's existing Malin-Meridian line; and (6) the building of 6 miles of 500-kV line from the new substation to the Oregon-California border to complete a link with the California-Oregon Transmission Project (COTP).

FOR FURTHER INFORMATION CONTACT: To request a copy of the Administrator's Record of Decision, please call one of BPA's toll-free document request lines: (800) 841–5867 for Oregon or (800) 624–9495 for other Western states.

For additional information, please contact Anthony R. Morrell, Assistant to the Administrator for Environment, at (503) 230–5136; or call the Public Involvement office in Portland at (503) 230–3478, toll-free (800) 452–8429 from Oregon outside of Portland, or toll-free (800) 547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George E. Guinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, Suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION: The environmental impacts of construction and maintenance of the Project, and the physical impacts of operation of the Project itself (such as thermal plant operation and electrical effects) were addressed in Environmental Impact Statements and Records of Decision.

The physical impacts of construction were addressed in the COTP Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) (January 1988) produced by the Transmission Agency of Northern California and by the Western Area Power Administration, with BPA as a cooperating agency. The COTP Record of Decision (ROD) was published April 22, 1988. Operational impacts of the Third AC Project were addressed in the Intertie Development and Use Final EIS produced by BPA (April 1988). Environmental impacts of the 500-kV Malin-Meridian line were addressed in the Eugene-Medford Project EIS, produced by the Bureau of Land Management, with BPA as a cooperating agency (1983). The Eugene-Medford ROD was published December 15, 1984; DOE adopted the EIS and BPA published its own ROD on this project on Octoer 28, 1985.

The subject of this ROD is the decision for AC Intertie owners in the Pacific Northwest (PNW) to take actions to enable successful operation of the COTP in order to expand the bidirectional capability of the PNW-Pacific Southwest (PSW) Intertie transmission system; to help serve California's need for economical power; to support the PNW desire to sell surplus power; and to maintain and increase reliability of the existing transmission system.

In making this decision, BPA considered the following factors: ability to meet the need, engineering performance, economic factors, public and institutional issues, and environmental effects. The environmental preferable alternative was selected.

Primary public concerns included accuracy of economic benefit projection; timing and size of the project; relative consideration of costs of environmental impacts and mitigation; power system effects (including potential for adverse impacts on resident and anadromous fish and on wildlife); BPA's reliance on fish bypass facilities planned by the U.S. Army Corps of Engineers (USACE) as mitigation for potential effects; visual impacts; and avoidance of interference with agricultural practices. These concerns were responded to in the various EISs and their respective RODs. These documents showed little environmental reason not to proceed with constructing, operating, and maintaining the Project, considering the planned installation of fish bypass facilities on dams by the USACE and the Mid-Columbia Public Utility Districts.

Issued in Portland, Oregon, on September 27, 1988.

James J. Jura,

Administrator.

[FR Doc. 88-24574 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-01-NG]

G.A.S. Orange Development, Inc.; Conditional Order Granting a Long-Term Authorization to Import Natural Gas From Canada and Granting Intervention

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of conditional order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting a long-term authorization to import natural gas from Canada to G.A.S. Orange Development, Inc. (G.A.S. Orange). The conditional order, issued in ERA Docket No. 88-01-NG, authorizes G.A.S. Orange to import up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas over a 20-year term to fuel a cogeneration facility to be built in Syracuse, New York.

This order is conditioned on the subsequent review and acceptance of unfinished environmental documentation related to construction by Tennessee Gas Pipeline Company of new pipeline facilities required for delivery of the gas to the facility's tapline, the construction of the cogeneration facility and DOE's compliance with the National Environmental Policy Act requirements related to the issuance of a final order in this docket.

A copy of this conditional order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 18, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-24662 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-50-000, et al.]

Natural Gas Pipeline Co. of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP89-50-000]

October 18, 1988.

Take notice that on October 13, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-50-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu equivalent of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Nation's Rate Schedule ITS) for TexPar Energy, Inc. (TexPar), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

The proposed receipt points by Natural are located in Louisiana, Illinois, Texas, Oklahoma, New Mexico, Montana, Iowa, Arkansas, Kansas, Nebraska and Wyoming and the proposed delivery points are located in Illinois, Missouri, Nebraska, Louisiana, Iowa, Michigan, Texas, Oklahoma, Kansas and New Mexico.

It is stated that Natural commenced the transportation of natural gas for TexPar on August 4, 1988, at Docket No. ST89-148 for a 120-day period ending December 2, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and an interruptible transportation service agreement dated May 10, 1988, as amended, May 19, 1988, and July 25, 1988, between TexPar and Natural. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b).

Natural states that TexPar has advised that the volume anticipated to be transported under the agreement on an average day is 25,000 MMBtu equivalent, and, based on that average day figure, the annual volume to be transported is 9,125,000 MMBtu equivalent. Natural states further that no new facilities are to be constructed.

Comment date: December 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88–888–000]

October 19, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–888–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Energy Dynamics, Inc. (Energy Dynamics), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully met forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day, 37,500 MMBtu on an average day and 18,250,000 MMBtu on an annual basis for Energy Dynamics. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5870.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–28–000]

October 20, 1988.

Take notice that on October 7, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–28–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authority to provide interruptible transportation service for Sun Refining and Marketing Company (Sun) under Transco's blanket transportation certificate issued April 29, 1988, in Docket No. CP88–328–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states it will receive the gas at the Katy/Exxon Gas Plant in Waller County, Texas and deliver the gas at Marcus Hook, Delaware County, Pennsylvania.

Transco proposes to transport up to 20,000 dt of natural gas per peak day, 8,000 dt on an average day, or approximately 2,920,000 dt annually. Transco states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 1, 1988, pursuant to a transportation agreement dated July 15, 1988. Transco notified the Commission of the commencement of the transportation service in Docket No. ST88–5843 on September 28, 1988.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, a Division of Enron Corp.

[Docket No. CP88–872–000]

October 20, 1988.

Take notice that on September 29, 1988, Northern Natural Gas Company, a Division of Enron Corporation (Northern) 1400 Smith Street, Houston, Texas 77251–1188, filed in Docket No. CP88–872–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc., under the certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport up to 400,000 MMBtu of natural gas per day for Enron Gas Marketing, Inc., on a peak day, 300,000 MMBtu on an average day and 146,000,000 MMBtu annually, under Rate Schedule IT–1. This service was reported to the Commission in ST88–5451. Northern further states the construction of facilities will not be required to provide the proposed service.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP88–880–000]

October 20, 1988.

Take notice that on September 29, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–880–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Polaris Corporation (Polaris), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 20,600 MMBtu/day for Polaris from one (1) point of receipt in Caldwell Parish, Louisiana to one (1) delivery point in Ouachita Parish, Louisiana. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 20,600 MMBtu and 7,519,000 MMBtu respectively, and that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88–5701.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89–14–000]

October 20, 1988.

Take notice that on October 5, 1988, Northern Natural Gas Company, a Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–14–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to sell additional volumes to its utility customer, Southern Union Gas Company (Southern Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the authorization to sell additional volumes of natural gas to Southern Union is requested in order to serve the natural gas requirements of the community of McCamey, Texas.

Northern states further that the total service to Southern Union would not exceed 2,000 Mcf per day.

It is stated that no additional facilities are required to be constructed to effectuate the proposed services. It is further stated that the proposed service would not reduce or jeopardize any service to Northern's existing customers.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company

[Docket No. CP89-39-000]

October 20, 1988.

Take notice that on October 11, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-39-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for sales of natural gas to its existing firm sales customer, CNG Transmission Corporation (CNG), under the blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a request by CNG, it proposes to establish a new delivery point to better serve CNG's existing service area. It is stated that the new delivery point would be located near the town of Avon, New York, at a point near Tennessee's "200" Main Line Valve 234. It is further stated that the maximum daily quantity to be delivered to the new delivery point would be 4,400 dekatherms (dt) per day equivalent of natural gas, and that the sale would be made pursuant to an existing contract dated August 26, 1987. Tennessee states that the maximum daily quantity of gas that CNG may purchase under the contract is 631,200 dt and the maximum annual quantity is 230,388,000 dt. Furthermore, Tennessee states that the establishment of the new delivery point would not increase or decrease those maximum daily or annual contract quantities. It is explained that CNG would nominate the specific quantities of gas to be delivered at each delivery point (including the proposed delivery point) subject to the specified maximum daily and annual quantity limitations at each point.

Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers. It is stated that the estimated total cost of the new delivery point is $108,000.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-18-000]

October 20, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company (Southern), filed in Docket No. CP89-18-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport gas on an interruptible basis for Sonat Marketing Company (SMC) under Southern's blanket certificate issued in Docket No. CP88-316-000, under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for SMC, a marketer, pursuant to a service agreement dated July 22, 1988, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to transport on an interruptible basis 1,600 MMBtu of gas on a peak day, 641 MMBtu of gas on an average day, and 233,965 MMBtu of gas for SMC on an annual basis. Southern proposes to receive the gas at various receipt points in Louisiana, offshore Louisiana, Mississippi and Texas for delivery to an end-user in South Carolina. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for SMC on August 1, 1988, as reported in Docket No. ST88-5518 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-16-000]

October 20, 1988.

Take notice that on October 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-16-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Tejas Power Corporation (Tejas) under Transco's blanket certificate issued in CP88-328-000 under section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that it would perform the proposed transportation service for Tejas pursuant to a service agreement dated July 22, 1988. Transco also states that the total volume of gas to be transported for Tejas on a peak day will be 25,000 dt; on an average day will be 25,000 dt; and on an annual basis will be 9,125,000 dt.

Transco further states it will receive the gas at Crowley, Acadia Parish, Louisiana and deliver the gas at Philadelphia, Pennsylvania. The points of receipt and delivery pursuant to the service agreement are on file with the Commission.

Transco avers that the proposed service is currently being performed pursuant to the 120-day period of § 284.223(a)(1) of the Commission's Regulations. Transco also states that transportation service between Transco and Tejas commenced on August 25, 1988, as reported in Docket No. ST88-5757. Transco states that no new facilities will be constructed by Transco in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Tejas will receive gas on behalf of Tejas.

Transco states that it knows of no other applications that are related to this transaction.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89-34-000]

October 20, 1988.

Take notice that on October 7, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-34-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued on Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to amendments dated July 13, 1988, and August 22, 1988 to the Interruptible Gas Transportation Agreement TI–21–1606, dated May 6, 1988, it proposes to transport up to 103,000 MMBtu per day of natural gas for Texaco for a primary term expiring September 1, 1989, and shall continue month to month thereafter. United indicates that the transportation service will be performed wholly within the state of Louisiana.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered volumes would be approximately 103,000 MMBtu, 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88–5831 (filed September 26, 1988).

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89–44–000]

October 20, 1988.

Take notice that on October 12, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–44–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for PSI, Inc. (PSI), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88–582–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it would transport, on an interruptible basis, up to a maximum of 25,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for PSI. Natural states that the receipt points would be located in Texas, offshore Texas, Louisiana, offshore Louisiana, Kansas, Oklahoma, Iowa, New Mexico, Illinois and Arkansas and the delivery point would be located in Illinois. Natural indicates that the total volume of gas to be transported for PSI on a peak day would be 25,000 MMBtu; on an average day would be 5,000 MMBtu; and an annual basis would be 1,825,000 MMBtu. Natural indicates it would perform the proposed transportation service for PSI pursuant to a service agreement dated April 21, 1988, as amended August 2, 1988, between Natural and PSI.

Natural states that it commenced the transportation of natural gas for PSI on August 6, 1988, at Docket No. ST89–142–000 for a 120-day period ending December 4, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b). Natural states that no new facilities are proposed in order to provide this transportation service.

Natural also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of PSI is to receive natural gas on behalf of PSI, and that it has no and is not aware of other applications that are related to this transaction.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89–20–000]

October 20, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company (Southern), filed in Docket No. CP89–20–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport gas on an interruptible basis for Rangeline Corporation (Rangeline) under Southern's blanket certificate issued in Docket No. CP88–316–000, under section 7 of te Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Rangeline, a marketer, pursuant to a service agreement dated July 22, 1988, under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to transport on an interruptible basis 200 MMBtu of gas on a peak day, 118 MMBtu of gas on an average day, and 43,305 MMBtu of gas for Rangeline on an annual basis. Southern proposes to receive the gas at various receipt points in Louisiana and offshore Louisiana for delivery to an end-user in Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for Rangeline on August 1, 1988, as reported in Docket No. ST88–5508 pursuant to the 120-day self-implementing provision of §284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–36–000]

October 20, 1988.

Take notice that on October 7, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–36–000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued on Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United States that pursuant to amendments dated August 19, 1988, and August 25, 1988 to the Interruptible Gas Transportation Agreement T1–21–1723, dated July 14, 1988, it proposes to transport up to 206,000 MMBtu per day of natural gas for Texaco for a primary term of one month from the date of first delivery of gas and shall continue month to month thereafter. United states that it proposes to receive gas at several points located in Louisiana and Alabama and proposes to redeliver such gas to points located in the states of Florida, Mississippi, Alabama and Louisiana.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered would be approximately 206,000 MMBtu, 206,000 MMBtu, and 75,190,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88–5829 (filed September 26, 1988).

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of the notice.

14. National Fuel Gas Supply Corporation

[Docket No. CP88-890-000]

October 20, 1988.

Take notice that on September 30, 1988, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-890-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act an application to authorize the continuation of transportation service, on an interruptible basis, in Docket Nos. CP86-93, CP87-59, CP88-47, and CP86-628, on behalf of Columbia Gas Transmission Corporation (Columbia), National Fuel Gas Distribution Corporation (Distribution), Transco Energy Marketing Company (TEMCO) and Pine-Roe Natural Gas Company (Pine-Roe) for an additional one-year period beginning January 1, 1989. Additionally, National requests authorizaton to transport gas on an interruptible basis on behalf of Distribution for the account of Sharon Steel Corporation (Sharon Steel), and on behalf of Highland Land & Minerals, Inc. (Highland), all as more fully set for in the application on file with the Commission and open to public inspection.

National proposes to transport up to 3,500 Mcf of natural gas per day on behalf of Columbia, 30 Mcf per day on behalf of Pine-Roe, 75,000 Mcf per day on behalf of TEMCO and in two separate arrangements, 51,615 Mcf and 6,000 Mcf of natural gas per day on behalf of Distribution. National also proposes for a one-year term beginning on January 1, 1989, to transport up to 30,000 Mcf of gas per day for Distribution on behalf of Sharon Steel, and up to 127 Mcf of natural gas per day on behalf of Highland.

National states that it would provide the transportation service through the use of existing facilities. National also states that it proposes to charge the rate presently authorized under National's Rate Schedule T-1 which is on file and approved by the Commission.

Comment date: November 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-7-000]

October 20, 1988.

Take notice that on October 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-7-000 an application pursuant to section 7(c) of the Natural Gas Act and to the order issued September 16, 1988, in Northeast U.S. Pipeline Projects, Docket No. CP87-451-009, *et al.*, and in accordance with the Associated PennEast Customer Group (APEC) for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline and related facilities and authorizing the transportation and storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that during the course of Commission-sponsored settlement conferences a consensus emerged among APEC, Transco, PennEast Gas Services Company, Texas Eastern Transmission Corporation, CNG Transmission Corporation, and Algonquin Gas Transmission Company and that they entered into a Memorandum of Understanding which ultimately lead to the filing of a settlement proposal on August 15, 1988 (APEC Settlement). Transco also states that the APEC Settlement provided that, upon Commission approval of the APEC Settlement, Transco would revise its application in Docket No. CP88-177-000 accordingly, to reflect a reduction in the facilities proposed in such docket by approximately 170 MMcf per day of capacity. Docket No. CP89-7-000 is thus filed to replace Docket No. CP88-177-000.

In this application, Transco proposes to provide a long-term, firm transportation service of up to the dekatherm equivalent of 125 MMcf of natural gas per day, on behalf of 4 local distribution companies (LDC's), 4 natural gas marketers (marketers), 2 cogeneration facilities (cogens) and 1 other, from the United States/Canadian border for delivery to the above mentioned customers in Transco's market area. Transco states that it has already received nominations for transportation service substantially in excess of the 125 MMcf dekatherms per day which would be offered. Transco further states that it would transport the gas in accordance with the individual transportation agreements in substantially the same form as Transco's *pro forma* Gas Transportation Agreement, a copy of which is included in the complete application. Transco states that it would charge, for the transportation service, a rate utilizing the modified-fixed- variable rate design methodology.

Transco also proposes to provide a storage service, for 6 LDC's, 3 marketers and 1 cogen, of up to 11 Bcf of storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsyvlania. Transco states that it has already received nominations for storage demand that would require storage capacity in excess of the 11 Bcf that is being offered. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its potential customers the storage service under the proposed Rate Schedule SS-2.

To effectuate the proposed service, Transco proposes to construct 29.01 miles of pipeline loop in Monroe and Clinton Counties, Pennsylvania and in Middlesex and Gloucester Counties, New Jersey. Transco would also add 12,600 horsepower of compression at its existing Compression Station No. 515 in Luzerne County, Pennsylvania and 12,000 horsepower at a proposed Station No. 205 in Mercer County, Pennsylvania. Transco estimates the facility cost to be $71 million.

In addition, Transco states that it would construct, install, and operate additional transporation facilities for 290 MMcf per day in excess of the above proposed 225 MMcf per day. The service would supply the Northeast markets which are capable of receiving service through Transco's facilities to the extent that the Commission determines that the market need exists and that the public convenience and necessity would be served. Transco states that it has the capability to develop incremental transporation capacity to deliver a significant volume of natural gas from the Leidy Hub area to Northeast U.S. markets in a cost-effective manner. Transco submits that, as an applicant and active participant in the Commission's "open season" proceeding, it is proposing, in its instant application, to expand its Leidy Line and market area facilities to provide additional transportation capacity to serve such markets.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date 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 and 385.214) 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time alowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24655 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-246-001]

ANR Pipeline Co.; Proposed Changes In FERC Gas Tariff

October 20, 1988.

Take notice that ANR Pipeline Company ("ANR") on October 14, 1988 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A, certain listed tariff sheets.

ANR states that the above referenced tariff sheets are being filed in compliance with the Commission's order of September 29, 1988 in this docket.

ANR has requested that the Commission accept this filing, to become effective October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the 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, 385.214). Such protests or motions must be filed by Oct. 28, 1988. Protests will 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24632 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-187-007]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 20, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 17, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 18, 1988:

Sixteenth Revised Sheet No. 16B
Sixth Revised Sheet No. 16B1
Sixth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's previous filings in Docket No. RP88-187 in which Columbia established procedures to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement its earlier filings to permit it to flow through additional take-or-pay and contract reformation costs to be billed to it by Panhandle Eastern Pipe Line Company (Panhandle) pursuant to Commission orders issued September 28, 1988 in Docket Nos. RP88-240-000 and RP88-241-000. Columbia also proposes to flow through, on an as-billed basis, certain take-or-pay costs billed to it by Tennessee Gas Pipeline Company (Tennessee) pursuant to Tennessee's settlement approved by the Commission on July 31, 1987 in Docket No. RP88-178-000, *et al.*

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 28, 1988. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24633 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-11-000]

Gator Hawk Gas Co.; Petition for Adjustment

October 19, 1988.

Take notice that on May 16, 1988, Gator Hawk Gas Company (Gator Hawk) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Gator Hawk petitions for adjustment relief so it can avoid refunding the difference between the NGPA section 108 adjusted stripper well price it collected and the section 103 price that it should have collected for gas sold from the Bardin No. 1 and Bardin No. 6 wells located in Ouachita Parish, Louisiana. Gator Hawk's petition pertains to the period February 1, 1981 through December 6, 1983.

Gator Hawk states that on March 2, 1981, the State of Louisiana determined that the wells qualified for NGPA

section 108 stripper well status. It adds that after the application of a recognized enhanced recovery technique, the wells' production exceeded 60 Mcf per production day, thereby disqualifying them for section 108 status.

Gator Hawk states that it failed to file a notice of disqualifications and a petition for enhanced recovery determinations for the subject wells because of inadvertence. It also argues that the grant of its petition is consistent with Commission precedents. Further, Gator Hawk asserts that if adjustment relief is denied it will suffer and out-of-pocket loss, subjecting it to a special hardship, inequity, or an unfair distribution of burdens.

The procedures applicable to the conduct of this proceeding are set forth in Rule 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 88–24629 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–242–001]

Granite State Gas Transmission, Inc.; Filing

October 20, 1988.

Take notice that on October 17, 1988 Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 01021, tendered for filing with the Commission the following tariff sheets in FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1988:

Substitute Original Sheet No. 7–C
Substitute First Revised Sheet No. 86
First Revised Sheet No. 87
First Revised Sheet No. 88
Original Sheet No. 89

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in this docket relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State requests and effective date of October 1, 1988.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory Commissions of the States of Maine, Massachusetts and New Hampshire.

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 Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1988. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24634 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–283–000]

Gulf Power Co.; Filing

October 20, 1988.

Take notice that on August 29, 1988, Gulf Power Company (Gulf Power) tendered for filing a response to the Commission staff's July 15, 1988 deficiency letter regarding Gulf Power's March 7, 1988 filing of transmission service agreement between Gulf Power and Bay Resource Management, Inc. (BRMI). The response addresses certain cost support issues set forth in the deficiency letter.

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, 385.214). All such motions or protests whould be filed on or before October 26, 1988. 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 proceedings. 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.

Lois D. Chashell,

Secretary.

[FR Doc. 88–24654 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EP89–4–000]

Tennessee Gas Pipeline Co.; Filing

October 20, 1988.

Take notice that on August 29, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective Novembver 16, 1988:

Substitute Second Revised Sheet No. 109
Original Sheet No. 109A
Second Substitute Third Revised Sheet No. 115
Original Sheet No. 115A
Substitute Second Revised Sheet No. 205

Tennessee states that the purpose of this filing is designed to provide Tennesee's shippers additional flexibility in arranging the purchase of natural gas supplies that can be attached by Tennessee. In particular, the revised tariff sheets provide that Tennessee will construct pipeline facilities to attach gas supplies purchased by shippers. Unless otherwise agreed to, the shipper would be obligated to reimburse Tennesee for cost of constructing the facilities. In addition, Tennessee proposes to provide more flexibility in the determination of the quantities delivered at delivery points.

Tennesee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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, 385.214). All such motions or protests should be filed on or before October 28, 1988. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24635 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6913-001]

Weber Basin Water Conservancy District; Availability of Environmental Assessment

October 20, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed West Gateway Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24630 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-1-000]

Williston Basin Interstate Pipeline Co.; Re-Notice of Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 20, 1988.

Take notice that on October 4, 1988, Williston Basin Interstate Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-B:

First Revised Sheet No. 2 First Revised Sheet No. 29 First
Revised Sheet No. 78 First Revised Sheet No. 160 First
Revised Sheet No. 164 First Revised Sheet No. 169 First
Revised Sheet Nos. 170-192 First Revised Sheet Nos. 193-224

Any person desiring to be heard or to protest the subject 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 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by October 27, 1988. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24636 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[CAC-004]

Energy Conservation Program for Consumer Products; Petition for Waiver and Application for Interim Waiver of Central Air Conditioner Test Procedures From Airlex Industries, LTD.

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Petition for Waiver, Interim Waiver; Correction.

SUMMARY: On October 5, 1988 (53 FR 39130), DOE published a Petition for Waiver and Interim Waiver from the central air conditioner test procedures from the Airlex Industries, LTD (Airlex) of Hackensack, New Jersey. This document corrects the editorial errors and omissions in that notice. The corrections to be made are to change the case number designation to CAC-004 instead of CAL-004, the addition of the DOE letter to Mr. Marco Goldish of Airlex, and the Airlex requests for Interim Waiver and Petition for Waiver dated August 24, 1988.

Issued in Washington, DC October 14, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

September 21, 1988.

Mr. Marco Goldish,
President, Airlex Industries, LTD., 216 Charles Street, Hackensack, NJ 07601

Dear Mr. Goldish: This is in response to your August 24, 1988, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for central air conditioners when testing Airlex's ductless split system heat pumps model series ERA/S-RC/RH.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including central air condtioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980 (45 FR 64108) and November 26, 1986 (51 FR 42823). These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitoner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

The Department finds that the design of the Airlex model series ERA/S-RC/RN cannot be rated using the DOE test procedures. This is caused by a design feature which disengages the heat pump and switches to electric resistance heat when the outdoor temperature falls below 40°F. The absence of a defrost control system and the inability to operate the basic model for the low temperature test at 17°F and the frost accumultation test at 35°F makes rating the unit with the current test procedures impossible. For this reason DOE believes that the Airlex Petition for Waiver will be successful.

Airlex expressed economic hardship in its correspondence caused by the inability to import models already produced, its investment in inventory of materials on hand, and its outstanding orders. The DOE definiton of economic hardship for granting an interim waiver requires that the manufacturer demonstrate an adverse impact on the company caused by the inability to sell its product for the time required to process the petition for waiver. DOE believes that the information provided by Airlex satisfies the requirements of economic hardship.

Therefore, Airlex's Application for an Interim Waiver requesting relief from the DOE test procedures for its ERA/S-RC/RH series ductless split system heat pumps is granted.

This interim waiver shall remain in effect for 180 days form the date of issuance or until the Department of Energy issues a determination on Airlex's Petition for Waiver, whichever occurs first.

This interim waiver is based upon the presumed validity of the statements and

allegations submitted by the applicant. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Yours truly,

Donna R. Fitzpatrick,

Conservation and Renewable Energy.

August 24, 1988.

Assistant Secretary for Conservation and Renewable Energy, U.S. Departmental of Energy, Office of Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC 20585

Att: Ms. Fitzpatric.

Subject: Petition for Waiver

Dear Ms. Fitzpatric: Airlex Industries, Ltd. is an American Corporation subsidiary of Electra (Israel) Ltd. engaged in the manufacture of PTAC units and ductless split system air conditioners and heat pump units. We have been manufacturing and selling this product in the U.S.A. for the past 5 years and all over the world since 1960.

In accordance with 10 CFR Part 430—Energy Conservation Program for consumer products we are requesting a waiver for the heating mode of our ductless split system heat pump units.

Models Waiver Requested for:

Heat Pump Models with Resistance Heat

ERA/S–9 RC/RH
ERA/S–12 RC/RH
ERA/S–15 RC/RH
ERA/S–20 RC/RH

The above models are designed to provide cooling or heating for individual rooms as opposed to larger type central systems designed to handle multiple rooms.

The Airlex heat pump models are designed in such a fashion that the cooling test can be conducted in accordance with the existing test procedure of the energy conservation program.

However, the heating operation of the above models is as follows:

a. Compressor operates to provide heating in a reverse cycle down to approximately 40 °F ambient temperature.

b. At 40 °F ambient outside the thermostat automatically de-energizes compressor circuit and activates electric heater circuit. Need for heating operation is controlled by indoor thermostat. (See copy of wiring diagram attached).

c. In accordance with our experience of 25 years, we do not use defrost control in these small units.

Airlex believes the design of our units in the heating mode make it impossible to perform or test them in accordance with 10 CFR Part 430.

Therefore, we require a waiver to the portion of the heating mode test procedure as follows:

a. Eliminate the 35 °F frost accumulation test because our compressor system is designed not to operate below 40 °F outside temperature.

b. Replace 17 °F ambient test with a higher temperature.

Manufacturers we know are marketing ductless mini-split systems are:

Sanyo
Mitsubishi
Daikin
Hupp/Typhon
Keeprite
Network
Tadiran

We have no knowledge of their control system.

As per above description, we would like to recommend a test procedure as follows:

1. All cooling tests to be performed as specified in the existing test procedure.

2. Regarding the heat pump reverse cycle, we propose our unit be tested on heating as follows:

Perform 62 °F high temperature test as presently specified in the code and perfrom low outdoor ambient heating test at 47 °F in lieu of the low temperature test at 17 °F.

Delete 35 °F frost accumulation test.

Retain the 47 °F cycle test or the option to use D.O.E. specified value for coefficient of degradition CD.

Calculations for HSPE will be performed using the existing equations in appendix M of part 430.

We recognize the test procedure is based on conditions stipulated for Region 4 for FTC. However, we desire to calculate facts sheets for the other regions (Not Region 4) illustrating the heating efficiency specifically for each region.

We would like to stress that we need this waiver because under the present law, we cannot test our existing units and from an economic point of view, we cannot supply to our customers the orders that we have on hand nor can we continue manufacture of the units with all the raw materials already purchased.

Thank you in advance for your assistance in implementing this waiver.

Your truly,

Marco Goldish,

President.

August 24, 1988.

Assistant Secretary for Conservation and Renewable Energy, U.S. Departmental of Energy, Office of Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC.

Attn: Ms. Fitzpatric.

Subject: Application for Interim Waiver

Dear Ms. Fitzpatric: Airlex Industries, Ltd. is an American Corporation subsidiary of Electra (Israel) Ltd. engaged in the manufacture of PTAC units and ductless split system air conditioners and heat pump units. We have been manufacturing and selling this product in the U.S.A. for the past 15 years and all over the world since 1960.

We are forwarding this interim waiver in reference to our ductless split system heat pump units:

Heat Pump Models with Resistance Heat

ERA/S–9 RC/RH
ERA/S–12RC/RH
ERA/S–15RC/RH
ERA/S–20RC/RH

We request this interim waiver to permit the exclusion of the need for testing for immediate relief, until approval of our petition of a waiver which will establish a test procedure for our units.

We would like to emphasize that without this interim waiver we cannot continue to operate our businesss and will suffer economic hardships for the following reasons:

(A) We currently have orders dating back to 1st and 2nd Qtrs. of 1988.

(B) We purchased material and components for above orders.

(C) We initiated production, manufactured 300 units and then stopped production in June pending resolution of FTC.

(D) We do not have any inventory left in our U.S. warehouses to complete these orders.

(E) We are suffering customer dissatisfaction and cost burden due to cancelled production schedules. In addition purchased production material in our plant, adds to our expenses.

Airlex believes the petition for waiver submitted to D.O.E. will grant an alternative test procedure and will include decision allowing Airlex to determine HSPF for our heat pump units.

The issuance of this interim waiver will allow Airlex to continue operating its business during the review process by D.O.E. to grant approval for our waiver.

Thank you in advance for your consideration and assistance to expeditiously process this interim waiver.

Yours truly,

Marco Goldish,

President.

[FR Doc. 88–24573 Filed 10–24–88 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed Week of September 9 Through September 16, 1988

During the week of September 9 through September 16, 1988, applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 18, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 9 through Sept. 16, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1988	Economic Regulatory Administration, St. James, Louisiana.	KRZ-0086	Interlocutory. If granted: The Proposed Remedial Order issued to North American Petroleum Company and Mellon Energy Products Company (Case No. HRO-0197) would be modified to clarify that interest on any principal violation amount continue to accrue until such time as payment of principal and interest to the DOE is made.
Sept. 9, 1988	Enron Corporation, Washington, DC.	KEF-0116	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the July 27, 1988, Consent Order entered into with Enron Corporation.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 9 through Sept. 16, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
8/9/88	Howard Beaird	RF265-2763
8/9/88	Howard Beaird	RF265-2764
9/9/88	Crude Oil Refund	RF272-74870
9/16/88		thru RF272-74895
9/16/88	EXXON Refund	RF307-5181
thru 9/16/88		thru RF307-5439
9/9/88	Atlantic Richfield refund.	RF304-5013
thru 9/16/88		thru RF304-5688
9/12/88	Osborne Gulf	RF300-10516
9/12/88	Earl's Friendly Gulf Service.	RF300-10517
9/12/88	George's Gulf	RF300-10518
9/12/88	Noll's Gulf	RF300-10519
9/12/88	Gasland	RF300-10520
9/12/88	Cenla Gulf	RF300-10521
9/12/88	Walthers Oil Company.	RF310-157
9/12/88	Ashland Oil Company	RF300-10523
9/12/88	Shell Oil Company	RF305-13
9/12/88	Defense Fuel Supply Center.	RF310-156
9/13/88	Willy Foreman, Jr.	RF300-10522
9/14/88	Haney Bros.	RF300-10524
9/14/88	D.H. Clark Oil Company.	RF310-158

[FR Doc. 88-24663 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decision and Orders; Week of August 15 Through August 19, 1988

During the week of August 15 through August 19, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Excell, Inc., 8/19/88, KFA-0202

Excell, Inc., filed an Appeal from a denial by the Project Manager of the Strategic Petroleum Reserve Project Management Office (SPR) of a request for information that it had submitted under the Freedom of Information Act. In its Appeal, Excell challenged the withholding of one document under Exemption 5 of the FOIA. During the course of the Appeal before OHA, SPR determined that the document should have been withheld under Exemption 4, rather than Exemption 5. The challenge with respect to the Exemption 5 issue was therefore determined to be moot, and the Appeal was dismissed.

International Union of Operating Engineers Local 101, 8/19/88, KFA-0205, KFA-0207, KFA-0208

The International Union of Operating Engineers Local 101 filed three Appeals from denials of information by the Senior Information Officer of the Information, Publication and Planning Staff, and by the Deputy Director of the Office of Governmental and External Affairs, of the DOE's Albuquerque Operations Office. The Appellant had filed three FOIA requests with Albuquerque seeking access to the weekly certified payroll records submitted by three subcontractors for work performed at the Bendix Plant in Kansas City, Missouri. In their determinations, the Authorizing Officials released copies of all of the requested payroll records, but withheld the names and other identifying information of the employees involved. The Authorizing Officials determined that the privacy interests of the employees far outweighed any possible public interest to be served by release of the personal data to third parties. In considering the Appeals, the DOE determined that the release of the withheld information would constitute an invasion of the employees' privacy. The DOE noted that the Appellant failed to indicate why it was seeking the requested records, and that it did not state what public interest would be served by releasing the information. In view of the fact that there was no apparent or alleged public interest to balance against the serious invasion of personal privacy involved, the DOE denied the three Appeals.

Implementation of Special Refund Procedures

MCO Holdings/MGPC, 8/16/88, KEF-0108

The DOE issued a Final Decision and Order implementing Special Refund Procedures for the distribution of $715,420.48 pursuant to a consent order entered into between the DOE and MCO Holdings and its wholly owned subsidiary, McCullogh Gas Processing Corporation (MGPC). The DOE determined that these funds should be distributed to purchasers of MGPC natural gas liquids and natural gas liquid products from June 13, 1973 through the applicable date of decontrol. The decision established presumptions of injury for end-users, resellers whose claims are for $5,000 or less, and regulated firms. A 60 percent presumption of injury was established for medium range (5,000 to 50,000) claimants. The specific application procedures are set forth in the Decision.

Refund Applications

Getty Oil Company, K&K Oil Co., Inc., 8/19/88, RF265-1108

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We

determined that the applicant demonstrated that it experienced a decline in its share for motor gasoline, and therefore was injured as a result of Getty's pricing practices. The total refund approved in this Decision is $14,718, representing $7,187 in principal and $7,531 in accrued interest.

Getty Oil Company, Stender Oil Company, 8/19/88, RF265–2622

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline, and therefore was injured as a result of Getty's pricing practices. The total refund approved in this Decision is $2,434 representing $1,189 in principal and $1,245 in accrued interest.

Getty Oil Company/Zitek Skelly Service, et al., 8/19/88, RF265–331, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with the Getty Oil Company. Each applicant submitted information indicating the volume of Getty gasoline, middle distillate or propane products purchased from Getty during the consent ordered period. In four claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining three claims, the applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $42,943, representing $20,989 in principal and $21,954 in accrued interest.

Howell Oil Company, 8/19/88, RF272–12845

The DOE issued a Decision and Order denying an application for a crude oil refund filed by the Howell Oil Company (Howell), which sold motor gasoline, middle distillates, oils, and naptha during the crude oil settlement period (August 19, 1973 through January 27, 1981). The DOE determined that Howell was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

James Valley Co-op Union, 8/17/88, RF272–74609

The DOE issued a Supplemental Order to correct an error made in *Dale's Mobil Service*, 17 DOE ¶ ————, Nos. RF272–44164, *et al.* (July 21, 1988), in which we denied James Valley Co-op Union (JVCU) a refund. As an agricultural cooperative, JVCU is eligible for a refund if it certifies that it will pass through the refund to its customers. JVCU met this requirement, and therefore was granted a refund in the amount of $3,825.

Marathon Petroleum Company/Gas'N Save, 8/18/88, RF250–2462, RF250–2463

The DOE issued a Decision and Order concerning an Application for refund filed by Gas'n'Save in the Marathon Petroleum Company refund proceeding. Gas'n'Save, a retailer of Marathon products, submitted information attempting to establish that it was injured by Marathon's alleged overcharges and that it was therefore entitled to its full volumetric refund of $14,734. Upon reviewing the data filed by the firm, the DOE determined that the price comparison data used by Gas'n'Save applied to refinery and terminal prices, rather than to wholesale prices that the firm would have likely paid for the product. The DOE found that the prices Gas'n'Save paid Marathon were generally lower than average wholesale proces in the firm's market area. Accordingly, Gas'n'Save was granted a refund of 95 percent of its volumetric share or $5,157 plus $774 in interest.

Marathon Petroleum Co./Oakland County Gas & Oil Co., 8/16/88, RF250–2473, RF250–2774

This Decision and Order concerns Applications for Refund filed by the Oakland Gas and Oil Company in the Marathon Petroleum Company refund proceeding. The DOE found that the firm sustained a competitive injury as a result of Marathon's alleged overcharges. Oakland was granted a refund of $4,288 plus $643 in accrued interest.

Mobil Oil Corp./Bell Oil Company, R.F. Brennan Distributing, Inc., 8/17/88, RF225–9649, RF225–9650, RF225–9808, RF225–9809, RF225–9810, RF225–9811

The DOE issued a Decision and Order granting Applications for Refund filed by the Bell Oil Company and R.F. Brennan Distributing, Inc. in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each firm attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. In support of its claim, each firm submitted cost banks that it approximated from firm-wide annual revenue data. The DOE concluded that these annual cost banks were an inadequate basis for rebutting the level-of-distribution presumptions. In the Mobil proceeding, however, an applicant that fails in its attempt to rebut the level-of-distribution presumptions is still eligible for a refund. Accordingly, Bell was granted a presumption-level refund of $5,000, in principal, and Brennan a refund of $2,075, in principal. The total amount of refunds granted was $8,835, representing $7,075 in principal and $1,760 in accrued interest.

Mobil Oil Corp./Don Foster Oil Company, 8/17/88, RF225–9664

The DOE issued a Decision and Order granting an Application for Refund filed by Don Foster Oil Co. in the Mobil Oil Corp. Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Foster, a reseller/retailer of refined petroleum products, attempted to rebut the level-of-distribution presumption for its purchases of Mobil motor gasoline. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE concluded that Foster should receive a full volumetric refund on its purchases. The total refund granted to Foster was $5,639, representing $4,516 in principal and $1,123 in accrued interest.

Mobil Oil Corp./Galchutt Oil Company, 8/19/88, RF225–9714, RF225–9715, RF225–9716

The DOE issued a Decision and Order regarding a refund application filed by the Galchutt Oil Company in the Mobil Oil Corporation special refund proceeding. In its application, Galchutt stated that it operated as an agricultural cooperative during the consent order period and requested that its entire claim be evaluated as if it acted as an end-user in its sales of Mobil product to both its members and nonmembers. To substantiate its request, Galchutt submitted a copy of its Articles of Incorporation which state that all profits of its cooperative be distributed equally to members and nonmembers. In this way, any refund received would be distributed to both groups. The DOE found that this unusual method of distributing a cooperative's profits to nonmembers as well as members constituted an exception to the general method of evaluating a cooperative's claim at the retailer's level of injury when there are sales to nonmembers. We therefore determined that Galchutt's entire claim be treated as purchases made by an end-user. In accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Galchutt was granted a refund totalling $1,942 ($1,555 in principal plus $387 in accrued interest).

Mobil Oil Corporation/Marine Corps Exchange Service, 8/19/88, RF225–7733

The DOE issued a Decision and Order granting an Application for Refund filed by the Marine Corps Exchange Service (the Exchange in the Mobil Oil Corp. refund proceeding, *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). In its Application, the Exchange claimed that Mobil had improperly discontinued a discount it was required to provide to the Exchange under the Mandatory Petroleum Price Regulations. As a result, the Exchange stated that it had experienced an alleged injury of $.0439 per gallon on regular and unleaded motor gasoline purchased and an injury of $.0589 per gallon on premium motor gasoline purchased between April 1, 1974 and December 30, 1980. The DOE found that, having demonstrated that its discount had been discontinued, the Exchange had rebutted the volumetric presumption and had shown that it had experienced a disproportionate injury. The DOE also found that, because the Exchange was required to price its motor gasoline without regard to its purchase price, Mobil's pricing practices probably resulted in a loss of revenue for the Exchange during the relevant period. Based on these determinations, the DOE concluded that the Exchange was eligible to receive a refund of $2,872,024, representing $2,299,908 in principal plus $572,116 in interest.

Sysco Food System, 8/17/88, RF272–74608

The DOE issued a Supplemental Order to correct an error made in *Dale's Mobil Service*, 17 DOE ¶ ———, Nos. RF272–44164, *et al.* (July 21, 1988), in which the Sysco Food System (Sysco) was granted a refund as a reseller. However, Sysco was actually a food jobber and should be granted a refund in the amount of $987.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Allen May Farms, et al	RF272–35000	8/16/88	166	$4,338
Betty Lou Sweeting, et al	RF272–38400	8/18/88	163	4,124
Bianchi Brothers Inc. et al	RF272–13601	8/18/88	183	3,483
Bob Abernathy et al	RF272–10306	8/16/88	91	2,355
City of Mitchell et al	RF272–15801	8/16/88	132	3,912
Clyde Bartholomew, Jr., et al	RF272–3533	8/16/88	109	5,435
Cook, Inc., et al	RF272–33800	8/18/88	181	4,021
Eugene D. Gott, et al	RF272–4261	8/16/88	147	11,913
Farrell F. Beck, et al	RF272–12800	8/18/88	88	4,645
Gerald D. Denton, et al	RF272–12612	8/16/88	78	3,736
Gordon Petrik, et al	RF272–37200	8/18/88	144	4,030
J.H. Phipps, et al	RF272–35200	8/18/88	166	3,785
Jerry A. Helsley, et al	RF272–35400	8/16/88	151	4,177
Junior Boyd, et al	RF272–8274	8/16/88	111	6,013
Kenneth D. Sherer, et al	RF272–7519	8/18/88	98	4,871
Lydall, Inc., et al	RF272–13001	8/18/88	27	9,781
Nordic Construction, et al	RF272–10019	8/16/88	137	7,475
O.D.O., Inc., et al	RF272–38800	8/16/88	165	4,261
Richard D. Carson, et al	RF272–35600	8/18/88	145	3,741
Richard Kretzer, et al	RF272–8175	8/16/88	150	11,395
Roger Brocka, et al	RF272–9200	8/16/88	151	12,505
Stephen E. Schroeder, et al	FR272–30000	8/18/88	179	4,335
Wiggins Farms	RF272–37000	8/18/88	159	3,901

Dismissals

The following submissions were dismissed:

Name	Case No.
Arnold Barfield	RF300–4047
Bonner's Gulf	RF300–101
Brandau's Gulf	RF300–4856
Century Furniture Co	RD272–9644
Cochran's Gulf Service	RF300–1426
Darch Bottle Gas and Appliance	RF139–157
E.G Abbott, L.P. Gas	RF300–1432
Frank Madonia	RF265–2231
Garvin J. Sloan	RF265–1964
	RF265–1965
Lanett Gulf Service	RF300–1583
Lockard Construction Co	RF272–50569
Moreno Paul Gulf Station	RF300–3495
Parrish Gulf Service	RF300–2874
R.J. (Pearl) Eggert	RF272–65160
Ramsey St. Gulf	RF300–1228
Rock Creek Gulf, Inc	RF300–564
Slim's Service Station	RF300–2480
South Lyon Community Schools	RF272–302

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 18, 1988.

[FR Doc. 88–24664 Filed 10–24–88; 8:45 am]

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Issuance of Decisions and Orders; Week of August 22 Through August 26, 1988

During the week of August 22 through 26, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eugene S. Post, 8/22/88, KFA–0203

Eugene S. Post (Appellant) filed an Appeal from a denial by the Assistant Manager for Administration, Cavannah River Operations Office of a Request for Information which he had submitted

under the Freedom of Information Act. In considering the Appeal, the DOE found that the material at issue—the names and applications of unsuccessful applicants for two DOE positions, the names of the successful applicants on the applicant evaluation worksheets, and the DOE evaluator's names—were properly withheld under Exemptions 5 and 6. However, the DOE ordered the Assistant Manager to indicate to the Appellant which of the scores on the worksheet were those of the successful applicants. The most important issue considered in the Decision and Order involved the balancing of the public interest in releasing this material with the applicants' privacy interests.

Request for Exception

Le Paul Oil Company, 8/16/88, KEE–0160

Le Paul Oil Company (Le Paul) filed a Statement of Objections to the Proposed Decision and Order (PDO) tentatively denying the firm's Application for Exception from the requirement to file Form EIA–782B, entitled, "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the firm's Objections, the DOE found that Le Paul provided cruicial information to the nation as a certainty firm and did not have a burden significantly different from other reporting firms. Accordingly, the firm's application for exception relief was denied.

Refund Applications

Aminoil U.S.A. Inc., MGU Development Company, 8/22/88, RF139–95

The DOE issued a Decision and Order concerning an Application for Refund filed by MGU Development Company. The firm is seeking funds made available by Aminoil U.S.A., Inc., in a consent order with the Department of Energy. The procedures set forth to distribute the Aminoil funds contain a presumption that spot purchasers of Aminoil products were not injured by the alleged overcharges. Because MGU made only sporadic purchases from Aminoil, the Department requested that MGU rebut the spot purchaser presumption. The firm was unable to do so and, therefore, its claim was denied.

Aminoil U.S.A., Inc./Pennington LP Gas Company, 8/26/88, RF139–89

The DOE issued a Decision and Order concerning an Application for Refund filed by Pennington LP Gas Company (Pennington), a retailer/reseller of propane covered by a Consent Order that the DOE entered into with Aminoil U.S.A., Inc. Pennington claimed that it was entitled to a refund in excess of the volumetric amount because it was disproportionately overcharged as a result of improper freight charges. We concluded that no refund above the volumetric level is warranted in this proceeding. Based on the documentation submitted by Pennington substantiating that during the consent order period it maintained banks of unrecovered costs and purchase cost data that was compared with publicly available industry pricing data, we determined that Pennington suffered significant injury and that a refund of the full volumetric amount is appropriate. The total refund approved in this Decision is $297,550, representing $169,009.22 in principal and $128,540.78 in accrued interest.

Dorchester Gas Corporation/Southwest Gas Equipment Co. G.E. Stahl, 8/23/88, RF253–43, RF253–50

Southwest Gas Equipment Co. and G.E. Stahl each filed an Application for Refund in the Dorchester Gas Corporation refund proceeding. Their submissions established that they were regular purchasers of propane produced and supplied by Dorchester during the consent order period. Although their volumetric refund share exceeded $5,000, they elected to receive a refund under the administrative presumption rule. The DOE therefore granted each of them a refund of $5,000 plus accrued interest without requiring a proof of injury.

Dorchester Gas Corporation/Turpin Oil Company, 8/26/88, RF253–443

Turpin Oil Company filed an application for Refund in the Dorchester Gas Corporation refund proceeding. Turpin purchased propane produced by Dorchester from Phillips Petroleum Company during the consent order period. As an indirect purchaser, it is eligible for a refund to the extent that the direct purchaser passed through the alleged overcharges to its customers. In a Decision and Order issued to Phillips, the DOE granted Phillips a refund equal to 20.4358 percent of its volumetric share. *Dorchester Gas Corp./Phillips Petroleum Co.*, 16 DOE 85,400 (1987). Thus, the remaining 79.5642 percent of Phillips volumetric share is available for distribution to its downstream purchasers. On this basis, the DOE granted Turpin a refund of $3,823 plus interest, which equals its purchase volume multiplied by the applicable percentage of its volumetric share.

Everett R. Kneeland, et al., 8/24/88, RF272–14363, et al.

The DOE issued a Decision and Order denying thirteen Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Fitts Farms, Inc., 8/26/88, RF272–12570

The DOE issued a Decision and Order in which it determined that Fitts Farms, Inc. had inadvertently been granted two refunds in the Subpart V Crude Oil refund proceedings. Accordingly, the DOE rescinded the refund granted to Fitts Farm in *Kenneth D. Sheru*, 17 DOE ¶ 85,705 (1988), and ordered the Controller's Office of the DOE not to distribute Fitts Farms' refund.

Getty Oil Company/Garvin J. Sloan, 8/22/88, RF 265–1963

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $10,279 representing $5,019 in principal and $5,260 in accrued interest.

Getty Oil Company/Lawrence E. Collier, 8/22/88, RF265–2716

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $2,277, representing $1,112 in principal and $1,165 in accrued interest.

Getty Oil Company Truckers Inn, Inc., Seward Propane, 8/25/88, RF265–2725, RF265–2726, RF265–2742

Truckers Inn, Inc. and Seward Propane Company filed Applications for Refund in which the applicants sought a portion of the fund obtained by the DOE through a Consent Order entered into with Getty Oil Company. The applicants submitted information indicating the volumes of Getty gasoline, middle distillate or propane purchased during the consent order period. Utilizing the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1968), the applicants elected to use the presumptive levels of injury, forty percent for gasoline, fifty percent for middle distillate and sixty

percent for propane. The total amount of the refund approved in the Decision and Order is $42,943.

Getty Oil Company/Weiler Oil Company, 8/23/88, RF265-0930, RF265-0931

The DOE issued a Decision and Order concerning two Applications for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline/middle distillates and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $1,126, representing $550 in principal and $576 in accrued interest.

Gulf Oil Corporation/Birmingham Auto Service, 8/22/88, RF40-279

The DOE issued a Decision and Order concerning an Application for Refund filed by Birmingham Auto Service. The firm is seeking funds made available by Gulf Oil Corporation in a consent order with the Department of Energy. The procedures set forth to distribute the Gulf funds state that an applicant must certify that it would not have been required to pass through to its customers a cost reduction equal to that of the refund requested. The firm has made this certification and has provided a monthly purchase volume schedule in support of its claim of less than $5,000 in principal. After reviewing the application and supporting data, the DOE has concluded that Birmingham should receive a refund of $1,386, representing $1,064 in principal and $322 in interest.

Jack Griggs, Inc., et al., 8/25/88, RF272-27828, et al.

DOE issued a Decision and Order and denying twelve Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Mack-Miller Candle Co., Inc., 8/26/88, RF272-12571

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Mack-Miller Candle Co., Inc. based on its purchases of residual fuel oil and paraffin during the period August 19, 1973 through January 27, 1981. Mack-Miller used the products in its manufacturing of ecclesiastical candles. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that paraffin is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $533.

Marathon Petroleum Co./Bassett Oil & Equipment Co., 8/23/88, RF250-2454, RF250-2455

Bassett Oil and Equipment Company filed an Application for Refund in the Marathon Petroleum Co. refund proceeding. During the Marathon consent order period, Bassett purchased and resold gasoline supplied by Marathon. The DOE found Bassett sustained competitive disadvantage as a result of Marathon's alleged overcharges. On the basis of the claimant's purchase volume, the DOE granted Bassett a refund of $7,936 plus $1,190 accured interest.

Marathon Petroleum Co./Brink's Incorporated, 8/26/88, RF250-2746

The DOE issued a Decision and Order concerning an Application for Refund filed by Brink's, Incorporated, an end-user of motor gasoline covered by a consent order that the DOE entered into with Marathon Petroleum Company. The Applicant's claim was estimated and based, in part, on indirect purchases. The DOE found the Applicant's estimation method to be reasonable and, since none of the applicant's indirect purchases came from firm that demonstrated the specific extent of its own injury, the DOE included the indirect purchases in the Applicant's allocable share. As an end-user, the Applicant was presumed injured by Marathon's alleged overcharges. The refund approved in this Decision is $274 in principal and $50 in interest.

Marathon Petroleum Co./Savings Oil Co., 8/25/88, RF250-2, RF250-3

Savings Oil Company filed a Motion for Reconsideration of a Decision and Order that the OHA issued on January 29, 1988. In that Decision, the DOE found that the firm had a negative cost bank at the end of 1979, indicating that it was able to recover all of the product purchase costs incurred prior to January 1, 1980. The DOE therefore limited refunds to Savings to the products that the firm purcahsed from Marathon after December 31, 1979. In its Motion for Reconsideration, Savings stated that it erroneously failed to accumulate its unrecouped product costs on a quarterly basis. It corrected the error and established that it had a cumulative banked costs at the end of each quarter greater than its refund claim. The firm also established that it sustained competitive injury as a result of Marathon's alleged overcharges. The DOE therefore granted Savings a refund of $13,652 plus interest, which, when added to the amount of refund granted in the January 19, 1988 Decision, is equal to the firm's volumetric share in the Marathon refund pool.

Marathon Petroleum Company/W.E. Jersey & Sons, Inc., 8/23/88, RF250-1286

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant purchased some product directly from Marathon, but purchased the remainder from Fleming Brothers Oil Company. The DOE determined that the Applicant's indirect purchases should be considered under the standards for direct purchases because Fleming never demonstrated a specific level of overcharge absorption. The Applicant's total refund request was smaller than the $5,000 small claims refund amount. The refund approved in this Decision is $430 in principal and $78 in interest.

Mobil Oil Corp., C.L. Wellington, Inc., Ridgeway Petroleum, Inc., 8/26/88, RF225-9618, RF225-9619, RF225-9620, RF225-9621, RF225-11046, RF225-9729, RF225-9730, RF225-9731

The DOE issued a Decision and Order granting Applications for Refund filed by C.L. Wellington, Inc. and Ridgeway Petroleum, Inc. in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each applicant attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. In support of its claim, each applicant submitted cost banks that it approximated from firm-wide annual revenue data. The DOE concluded that such cost banks were an inadequate basis for rebutting the level-of-distribution presumptions. In the Mobil proceeding, however, an applicant that fails in its attempt to rebut the level-of-distribution presumptions is still eligible for refund under them. Accordingly, C.L. Wellington was granted a refund of $4,574, representing $3,663 in principal $911 in interest, and Ridgeway Petroleum was granted a refund of $9,409, representing $7,535 in principal

and $1,874 in interest. The total amount of refunds approved in the Decision was $13,983, representing $11,198 in principal and $2,785 in interest.

Mobil Oil Corp./John's Mobil, Chan Hi Kim, 8/24/88, RF225–4518, RF225–4519, RF225–4869

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning two applications filed by John's Mobil (John's) and Chan Hi Kim (Kim). Both applicants filed incomplete refund applications in the Mobil proceeding. DOE made numerous requests for additional information from both firms, but neither responded. Because John's and Kim failed to submit information required by the Mobil refund procedures, the two applications were denied. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

Mobil Oil Corp./Koch Refining Company, Commonwealth Propane Company, 8/23/88, RF225–7030, RF225–7031, RF225–10002

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning two refund applications filed by Koch Refining Company (Koch) and Commonwealth Propane Company (Commonwealth). Both applicants submitted purchase volume schedules showing sporadic and varied purchases. DOE tentatively concluded that both firms had purchased on the spot market and requested documentation from each to rebut the spot purchaser presumption. Neither firm was able to submit the necessary documentation. Accordingly, both claims were denied. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985).

Mobil Oil Corp./St. Louis Fuel & Supply Co., 8/22/88. RF225–10145

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning a refund applications filed by St Louis Fuel & Supply Co., Inc., (St. Louis), a reseller of Mobil middle distillates during the Mobil consent order period. St Louis' claim exceeded the $5,000 small claims presumption of injury level. Rather than submit documentation to demonstrate injury. St. Louis elected to limit its claim to $5,000. The DOE found that St. Louis was eligible to receive a total refund of $6,244 ($5,000 in principal plus $1,244 in interest) in accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985).

National Car Rental, the Hertz Corp., Ryder Truck Rental, Inc., 8/25/88, RF272–15443, RF272–42811, RF272–73139

The DOE issued a Decision and Order denying three applications refund filed in connection with Subpart V crude oil refund proceedings. Each Applicant was a car rental and/or leasing agency during the period August 19, 1973 through January 27, 1981. The Applicants were considered resellers for the purposes of the crude oil Subpart V refund proceedings. Because none of the Applicants demonstrated that they were injured due to crude oil overcharges, they were ineligible for a crude oil refund.

Northern Service Centers Corp., et al., 8/23/88, RF272–43276, et al.

The DOE issued a Decision and Order denying eight Applications for Refund filed in connection with Supart V crude oil refund proceedings. Each Applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Royal Crown of Angelo, Inc., et al., Coca-Cola Bottling Company of Los Angeles, Mid-South Bottling Company, 8/25/88, RF272–162, et al., RF272–288 RF272–329

Seventeen domestic bottling companies filed Applications for Refund, based upon their purchases of a refined petroleum products during the period August 19, 1973 through January 27, 1981. The Applicants requested refunds from the crude oil monies currently available for disbursement by the Office of Hearings and Appeals (OHA) pursuant to OHA's authority under 10 CFR Part 205, Subpart V. On October 15, 1987, a group of thirty States and two Territories of the United States (collectively "the States") filed consolidated States' Objections and Motions for Discovery in two of the refund proceedings, involving Coca-Cola Bottling Co. of Los Angles (CCLA) and Mid-South Bottling Co. (Mid-South), in which the States opposed the receipt of any refund by those two firms and sought discovery of information in support of their opposition. In considering the Applications of the bottlers and the States' Objections and Motions for Discovery, the DOE determined that: (1) The seventeen bottlers were presumptively entitled to refunds as industrial and end-users of petroleum products outside of the petroleum industry and each applicant had certified the volume of petroleum products which it purchased during the price control period; (2) the states had failed to rebut the presumption of eligibility on the basis of the States' Objections with regard to CCLA and Mid-South; and (3) the States had failed to show that discovery with regard to the CCLA and Mid-South Applications was appropriate or that any additional information should be required of those firms. Accordingly, the Applications for Refund of the seventeen bottlers were granted, and the States' Objections and Motions for Discovery were dismissed.

Schlegel Tennessee, Inc., 8/26/88, RF272–7751

The DOE issued a Decision and order granting a refund from crude oil overcharge funds to Schlegal Tennessee, Inc., a producer and supplier of rubber weather stripping for autombiles. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973, through January 27, 1981. The DOE also found that "process oil", a thin oil which is mixed with polymer and carbon black to form synthetic rubber, and "dust stop oil", a lubricant and cleaning agent used in rubber mills, are eligible products upon which a crude oil refund claim may be based. However, the DOE determined that "polymer' is not an eligible product since it is not directly refined from crude oil. Schlegel was determined to be an end-user of the products involved and was, therefore, found injured based upon the end-user presumption of injury. The refund granted in this Decision is $555.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of appli-cants	Total refund
A.A. Sandru, et al	RF272-39200	8/2488	169	4,539
Alan V. Ochs, et al	RF272-39600	8/2488	163	3,593
Bill R. Woods, et al	RF272-39400	8/2488	164	4,368

Name	Case No.	Date	Number of applicants	Total refund
Bob Carlton, et al	RF272-36800	8/2688	145	4,329
Charles E. Fouts, et al	RF272-37800	8/2688	170	3,832
Durand Area Schools, et al	RF272-163	8/2688	51	31,376
Edward A. Byers, et al	RF272-40200	8/2488	169	3,740
Edward J. Suchla, et al	RF272-40600	8/2688	174	4,240
Frank & Edith Rossi, et al	RF272-9905	8/2688	88	3,206
Gary Karcher, et al	RF272-36400	8/2688	168	4,040
J.E. Rainey, et al	RF272-39800	8/2488	181	4,302
J.W. Millane, et al	RF272-37400	8/2288	155	4,280
Lake Villa C.C. School District, et al	RF272-36001	8/2288	147	3,893
Loren Bauman, et al	RF272-40001	8/2488	175	4,273
Norman Johnson, et al	RF272-36200	8/2488	167	4,370
Richard A. Schroeder, et al	RF272-40400	8/2688	190	4,077
St. Clair County, et al	RF272-40801	8/2688	158	3,247
Trupp Ranch, et al	RF272-12700	8/2688	98	2,905
Village of Arlington Heights, et al	RF272-7642	8/2288	150	6,545
W.B. Crosby, et al	RF272-3900	8/2288	178	4,333

Dismissals

The following submissions were dismissed:

Name	Case No.
Alps Tire & Service Co	RF300-4045
Antares Shipping Co., Ltd	RF272-68680
Athens St. Gulf	RF300-537
B&L Gulf	RF300-840
Big "C" Superette	RF300-1669
Bill's Gulf	RF300-74
Brown & Root USA, Inc	RF272-67214
Byron Gulf Station	RF300-925
Calfee Oil Co	RF300-51
Chico's Gulf Service Station	RF300-663
City of New Orleans	RF272-74554
Clint's Gulf Service	RF300-5624
Crutcher Oil Co	RF300-6158
Donald E. Salton	RF272-72102
East Kentucky Explosives, Inc	RF272-74336
Eber's Gulf Service Station	RF300-3562
Faldik Gulf Service	RF300-2804
Farmer's Co-op Gin	RF272-73602
Gulf Wholesale	RF300-5277
Hale Distributing Co., Inc	RF272-68564
Hendrick's Oil Co	RF300-6198
Hentz Gulf Service	RF300-2198
Lawrence E. Collier	RF265-2717
Lawson Gulf Service	RF300-2461
M.O.C., Inc	RF300-1968
Master Gulf Service Station	RF300-1326
Mattox Dist. Co., Inc	RF300-6911
McGuire Gulf Station	RF300-5455
Pennridge School District	RF272-27373
Portland Public Schools	RF272-73859
Reid Memorial Hospital	RF272-21147
States	RF272-12249
Stender Oil Company	RF265-2623
Terry's Service Station	RF300-707
The Dalles Cherry Growers	RF272-73603
Toney's Gulf	RF300-7188
Walt's Gulf Service	RF300-3018
Woodlawn Gulf	RF300-3510

Copies of the full text of these decisions and orders are available in the Public Reference room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director Office of Hearings and Appeals.

October 18, 1988.

[FR Doc. 88-24665 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 12 Through September 16, 1988

During the week of September 12 through September 16, 1988, the decisions and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/Desmond R. Johns Oil Company, 9/15/88, RF304-1

The DOE issued a Decision and Order concerning an Application for Refund filed by the Desmond R. Johns Oil Company in the Atlantic Richfield Company (ARCO) special refund proceeding. The application indicated that Johns was a consignee/agent of ARCO. Under the procedures for distributing ARCO funds, consignees are presumed not to have been injured by any alleged overcharges. Because the Johns application made no attempt to rebut this presumption, the DOE concluded that the firm was not injured and denied its Application for Refund.

Atlantic Richfield Company/Schock ARCO, 9/15/88, RF304-105

The DOE issued a Decision and Order concerning an Application for Refund filed by Schock ARCO in the Atlantic Richfield Company (ARCO) special refund proceeding. As a retailer claiming a refund of less than $5,000 in principal, Schock was presumed to have been injured by ARCO's alleged overcharges. After examining Schock's application and supporting documentation, the DOE determined that the firm should receive a refund of $5,208, representing $4,200 in principal and $1,008 in interest.

Bernard D. Gleespen, 9/16/88, RF272-74831

The DOE issued a Decision and Order granting a refund of $12 to Bernard D. Gleespen in the Subpart V crude oil overcharge refund proceeding. Since the order listed erroneous gallonage and refund figures for Gleespen, the DOE issued a Supplemental Order granting Gleespen an additional refund of $11.

City of Annapolis, 9/16/88, RF272-22241

The DOE issued a Decision and Order granting in part an Application for Refund filed by the City of Annapolis in connection with the Subpart V crude oil overcharge refund proceeding. Annapolis submitted a claim based on its purchases of gasoline and liquid asphalt. The DOE determined that Annapolis was ineligible for a refund because it did not purchase the refined petroleum product in its pure state, but rather purchased bituminous concrete, which is a mixture of liquid asphalt, rocks, gravel, and sand. With respect to the portion of Annapolis' claim based on gasoline purchases, the DOE determined that Annapolis was the end-user of that gasoline. Therefore Annapolis was determined to be eligible for its full allocable share of crude oil moneys with respect to the gasoline portion of its

claim. The refund granted in this Decision and Order is $217.

EXXON Corporation/Albert Burson et al., 9/13/88, RF307–2027, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased refined petroleum products directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products and eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,627 ($7,685 principal plus $942 interest).

EXXON Corporation/Morton Parnell et al., 9/15/88, RF307–2115, et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased refined petroleum products directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products and therefore eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $11,771 ($10,432 principal, plus $1,348 interest).

Getty Oil Company/Hutcheson Oil Company, 9/12/88, RF265–2706, RF265–2707

The DOE issued a Decision and Order concerning two Applications for Refund filed by Hutcheson Oil Company, a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. The DOE determined that Hucheson suffered a competitive disadvantage as result of its Getty purchases and therefore experienced a significant injury. Accordingly, the firm received a refund in the amount of its full volumetric share of $19,033, plus $19,943 in accured interest.

Getty Oil Company/James R. Todd, Jr., 9/15/88, RF265–2762

The DOE issued a Decision and Order concerning an Application for Refund filed by James R. Todd, Jr., a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of its Getty gasoline purchases and was eligible for refund below the $5,000 small claims threshold. The total refund approved in this Decision is $1,837, representing $896 in principal and $941 in accrued interest.

Getty Oil Company/Schlapia, Inc., 9/16/88, RF265–0820

The DOE issued a Decision and Order concerning an Application for Refund filed by Schlapia, Inc., and reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. The DOE determined that Schlapia experienced a competitive disadvantage and thereby suffered a signficant injury as a result of its Getty purchases. The firm received a refund in the amount of its full volumetric share, $12,347, plus $12,970 in accrued interest.

James Geray, 9/16/88, RF272–74830

The DOE issued a Decision and Order granting a refund of $6 to James Geray in the Subpart V crude oil refund proceeding. Since the order listed erroneous gallonage and refund figures for Geray, the DOE issued a Supplemental Order granting Geray an additional refund of $6.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Fries Brothers, et al	RF272–10400	9/15/88	137	$18,433
Hardman County Highway Department et al	RF272–13494	9/12/88	33	7,578
Paul Zerbe et al	RF272–13738	9/12/88	22	6,125

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Mesquite	RF300–7037, RF300–7038
Cochran Service Center	RF300–7704
Crowders Gulf	RF300–7714
Davis Gulf Station	RF300–6
Havrilak's Gulf	RF300–185
Home Oil Company of Belton	RF265–1348
Nassar Service, Inc	RF300–7694
Roberts Grocery	RF300–7051
S. B. Collins, Inc	RF265–1674
Schlapia, Inc	RF265–0821
Shipley & Son Gulf	RF300–6625
Smith's Bakery, Inc	RF272–69081
Sonny's Exxon	RF307–1800
Sylvan Hills Gulf	RF300–7732
Texas Instruments	RF272–58118
Tri-State Generation and Transmission Association, Inc.	RF272–63030

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 18, 1988.

George B. Breznay,

Director Office of Hearings and Appeals.

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Issuance of Decisions and Orders; Week of September 19 Through September 23, 1988

During the week of September 19 through September 23, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Arent, Fox Kintner, Plotkin & Kahn, 9/20/88, KFA–0211

The law firm of Arent, Fox, Kintner, Plotkin & Kahn filed an Appeal from a denial by the Bonneville Power Administration (BPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the BPA correctly withheld labor unit prices and prompt payment discounts in a service contract, pursuant to Exemption 4 of the FOIA. The DOE found that in the context of this contract, the release of

this information could reveal confidential pricing strategy and profit information. The DOE further found that even if contractual terms were arrived at through arm's-length negotiations, the terms were still "obtained from a person" for the pruposes of Exemption 4. Finally, the DOE, in reliance on an opinion of the Comptroller General, determined that the Federal Acquisition Regulation does not apply to BPA and, therefore, does not require BPA to release unit prices.

Glen Milner, 9/23/88, KFA–0216

Mr. Glen Milner filed an Appeal from a denial by the Deputy Director, Office of Intergovernmental and External Affairs, Albuquerque Operations Office (the Authorizing Official) of a Request for Information which he had submitted under the Freedom of Information Act. Mr. Milner noted that only one page of a DOE technical manual was treated as responsive to his request, and argued that the entire document should have been released to him. In considering the Appeal, the DOE found that it was entirely reasonable for the Authorizing Official to have interpreted Mr. Milner's request in the manner that he did and to have restricted his analysis to the relevant page of the technical manual. The DOE upheld the Authorizing Official's determination with respect to that page and remanded the matter for a determination concerning the remainder of the document.

Remedial Orders

Tesoro Petroleum Corporation, 9/23/88, HRO–0143

The DOE issued a Remedial Order to Tesoro Petroleum Company (Tesoro). In the Remedial Order, the DOE found that during the months of October and November 1977, Tesoro violated the entitlements reporting regulations codified at 10 CFR 211.66 and 211.67 and the circumvention regulation set forth at 10 CFR 205.202. Specifically, the DOE found that Tesoro entered into a series of crude oil sales, processing and refined product transactions which permitted the firm to shift the reporting of large volumes of price-controlled crude oil from itself to a refiner which was excepted from 100 percent of its entitlement purchase obligations under the Entitlements Program. According to the DOE, Tesoro masterminded a scheme to circumvent the letter and spirit of the DOE regulations by using an excepted refiner as titleholder to the crude oil and interjecting unnecessary intermediaries into the crude oil distribution chain. The DOE determined that the scheme was designed to enable Tesoro to mask its exclusive physical control and possession of the crude oil and to exclude the crude oil from its crude oil runs to stills on its Refiners' Monthly Reports. By excluding the crude oil from its Refiners' Monthly Reports, Tesoro was able to circumvent the entitlements reporting regulations and concomitantly reap a profit at the expense of the Entitlements Program. The DOE ordered Tesoro to refund the sum, $2,869,779, plus interest, which represents the amount of profit Tesoro unjustly received as the result of its scheme to reduce its costs under the Entitlements Program.

Texas American Oil Corportion, 9/19/88, KRO–0360

Texas American Oil Corporation (Texas American) filed a Statement of Objections to a Proposed Remedial Order (PRO) that was issued to the firm by the economic Regulatory Administration (ERA) on September 30, 1986. In the PRO, the ERA alleged that in its Refiners' Monthly Reports during the period October 1976 through February 1977, Texas American's wholly-owned subsidiary, Texas American Petrochemicals, Inc. (TAPI), misreported certain crude oil subject to "processing agreements" and thereby received excessive small refiner bias (SRB) benefits under DOE's Entitlements Program, 10 CFR 211.66, in violation of 10 CFR 211.67(e)(2). In the alternative, the ERA alleged that TAPI's transactions involving that crude oil resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR 205.202. In considering Texas American's Statement of Objections, the DOE rejected Texas American's contentions that: (i) The ERA misapplied § 211.67(e)(2) to the processing agreements at issue, (ii) the enforcement proceeding was barred by the termination of the DOE's Entitlements Program and by the Stripper Well Settlement Agreement, and (iii) Texas American should not be held solely liable for restitution of the illicit entitlements benefits. Since the DOE sustained the § 211.67(e)(2) violations, the DOE found that it was unnecessary to address the alternative § 205.202 violation alleged by the ERA. Accordingly, the PRO was issued as a final Remedial Order, and Texas American was required to refund the full amount of excessive SRB benefits received, $330,261, plus interest.

Interlocutory Order

Lajet, Inc., 9/22/88, KRZ–0087

A Deputy Director of the Office of Hearings and Appeals issued a Special Report Order (SRO) to LaJet, Inc. (LaJet). The SRO directed the firm to provide the ERA with certain information and documentary support concerning: (1) The firm's ownership interests in various entities; (2) the flow of crude oil among LaJet's suppliers, LaJet, and Young Refining Company; and (3) the transfer of LaJet's stock to Flare Energy Corporation. The Deputy Director issued the SRO to LaJet during the pendency of a Proposed Remedial Order proceeding involving the firm because of the procedural posture of the enforcement action.

Implementation of Special Refund Proceeding

Murphy Oil Corporation, 9/19/88, KEF–0095

The DOE issued a Decision and Order implementing a plan for the distribution of $7,104,217.29 received pursuant to a Consent Order between Murphy Oil Corporation and the DOE that was finalized on February 9, 1987. The DOE determined that the consent order funds should be distributed to customers that purchased covered products from Murphy during the period March 6, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc./Glades Gas Company, 9/23/88, RF139–141

The DOE issued a Decision and Order concerning an Application for Refund filed by Glades Gas Company in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted cost banks and market price data which indicated that it was forced to absorb Aminoil's alleged overcharges. Therefore, the firm demonstrated that it was injured by Aminoil's alleged overcharges to the full extent of its volumetric allocations of the consent order fund. After examining the firm's application and supporting documentation, the DOE concluded that it should receive a refund totaling $100,609, representing $56,829 in principal and $43,780 in interest.

Aminoil U.S.A., Inc./Rural Gas Company et al., 9/23/88, RF139–69 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by Rural Gas Company, Ford Pinkerton Company and Don Loftis in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks and market price data which indicates that they were forced to absorb Aminoil's alleged overcharges. Therefore, the firms

demonstrated that they were injured to the full extent of their volumertric allocations of the consent order fund by Aminoil's alleged overcharges. In addition, Rural and Loftis demonstrated that there was a change in ownership from Rural to Loftis in the middle of the refund period, and that each is entitled to a refund for its respective portion of the consent order period. After examining the three Applications for Refund and supporting documentation, the DOE granted refunds totaling $170,225, representing $96,168 in principal and $74,087 in interest.

Andale Farmers Cooperative Co., 9/21/88, RF272-7206

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Andale Farmers Cooperative Co. (Andale) based on its documented purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Since Andale, an agricultural cooperative, established that it would distribute the refund to its members, the application was granted. The total amount of the refund approved in this Decision and Order is $4,236.

Arizona Electric Power Cooperative, 9/23/88, RF272-74899

On August 16, 1988, the DOE had issued a Decision and Order granting a refund of $7,282 to Arizona Electric Power Cooperative (Arizona Electric), Case No. RF272-9358, now designated RF272-74899. *See Roger Brocka*, 17 DOE ¶ 85,700 (1988). Arizona Electric's application is one of several subject to a stay of disbursement of funds, *see Pacific Gas & Electric Company*, 17 DOE ¶85,315 (1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Arizona Electric.

Atlantic Richfield Company, Jubilee Oil Company Et Al., 9/21/88, FR304-200 Et Al.

The DOE issued a Decision and Order concerning twenty Applications for Refund filed by fifteen firms from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small refunds or end-users these firms were presumed to have been injured. The DOE found that these firms should receive refunds totalling $21,995, representing $17,609 in principal and $4,186 in interest.

Coline Gasoline Corp./Pennsylvania, RM2-115; National Helium Corp./Pennsylvania, RM3-116; Pennzoil Company/Pennsylvania, RM10-117; Standard Oil Co. (Indiana)/Pennsylvania, 9/19/99, RM251-118

The DOE issued a Decision and Order approving the Motion for Modification filed by the Commonwealth of Pennsylvania in the Coline Gasoline Crop., National Helium Corp., Pennzoil Company and Standard Oil Co. (Indiana) refund proceedings. Pennsylvania requested permission to expand its oil furnace retrofit program for low-income households to all types of fuel-burning furnaces in such households. Funding for the expanded program would come from $3,889,699 previously approved in the above proceedings and $433,301 in interest that had accrued on those funds, for a total planned expenditure of $4,323,000. Though the expanded program would benefit low-income households that do not use refined petroleum products for heating, the DOE approved the program because of the likelihood that all low-income households were injured by petroleum product overcharges, regardless of how they were heated.

Eastern Oil Company, Robert South, 9/21/88, RF306-2

The DOE issued a Decision and Order granting an Application for Refund filed by Robert South in the Eastern Oil Company refund proceeding. *See Eastern Oil Co.*, 16 DOE ¶ 85,687 (1987). The applicant was a reseller of motor gasoline and elected to limit his claim to $5,000 by relying on the small claims presumption of injury. Accordingly, the applicant received a total refund of $5,722, representing $5,000 in principal and $722 in interest.

Exxon Corporation/Rex Garage, 9/19/88, FR307-600 Et Al.

The DOE issued a Decision and Order concerning 42 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and is either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. Each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $24,570, representing $21,755 in principal plus $2,815 in interest.

Getty Oil Company, Chief Petroleum Company, 9/23/88, FR265-0557

The DOE issued a Decision and Order concerning an Application for Refund filed by Chief Petroleum Company (Chief), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Chief submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs, and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, the DOE determined that a refund to the applicant should be limited to $24,641 based on the gallons that the firm purchased at above market prices. The total refund approved in this Decision is $50,558, representing $24,641 in principal and $25,917 in interest.

Getty Oil Company/Flagship Fuel Stop, RF265-2728; Demers and Sons CITGO, RF265-2747; George's Getty, RF265-2753; Lyons Skelgas Co., 9/21/88, RF265-2754

The DOE issued a Decision and Order concerning four Applications for Refund by retailers or resellers of motor gasoline or middle distillates covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty motor gasoline or middle distillates purchased during the consent order period. Under the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1968), three applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining claim, the applicant elected to limit his claim to $5,000. The total amount of the refunds approved in the Decision and Order is $16,782, representing $8,185 in principal and $8,597 in interest.

Getty Oil Company/Home Oil Company of Belton, 9/21/88, RF265-1347

The DOE issued a Decision and Order concerning an Application for Refund filed by Home Oil Company of Belton (Home), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Home submitted a documentation substantiating that during the consent order period it maintained banks of unrecovered costs and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, we determined that Home suffered significant injury and that a refund based on its net excess costs on the purchases of Getty motor gasoline is appropriate. The total refund approved in this Decision is $60,815, representing $29,659 in principal and $31,156 in interest.

Getty Oil Company/Howard Beaird, 9/21/88, RF265-2763, RF265-2764

On August 19, 1988 the DOE had issued a Decision and Order granting refunds to a number of parties, including

Mr. Howard Beaird (Case Nos. RF265–2744 and RF265–2745). *See Getty Oil Co./Zitek Skelly Services,* 17 DOE ¶ 85,712 (1988). That Decision, however, incorrectly specified the payee of the refund. Accordingly, the Decision was amended to change the name of the payee from "Howard Beard, c/o Michael O'N. Barron, Attorney at Law" to "Howard Beaird/Skyline Truck Center *OR* Bassman, Mitchell & Alfano, Chartered".

Getty Oil Company/Schwarz Oil Company, 9/22/88, RF265–0551, RF265–0552

The DOE issued a Decision and Order concerning two Applications for Refund filed by Schwarz Oil Company (Schwarz), a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. Schwartz submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs, and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, the DOE determined that Schwarz suffered significant injury. Therefore, the DOE concluded that it was appropriate to grant Schwarz a refund of its full allocable volumetric share of $10,424 for motor gasoline and a limited refund of $500 for middle distillates. The total refund approved in this Decision is $22,399, representing $10,924 in principal and $11,475 in interest.

Lewis County Public Works Department, 9/23/88, RF272–11501

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. To estimate its fuel purchase volume, the applicant used annual bid records, then demonstrated that these records provided a conservative estimate of actual consumption. The refund granted in this Decision is $1,750.

Standard Oil Co. (Indiana)/Oglala Sioux Tribe, 9/23/88, RM21–126, RM251–127

The DOE issued a Decision and Order approving the Motion for Modification filed by the Oglala Sioux Tribe in the Amoco I and II refund proceedings. The tribe requested a one-year extension of its deadline for submitting a post-plan report. The DOE found that an extension would allow the tribe to continue providing comprehensive energy audits.

Tower Oil Company, Kaplan Service Station, Inc., 9/23/88, RF272–29699, RF272–48907

The DOE issued a Decision and Order denying two Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant purchased and resold refined petroleum products during the period August 19, 1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured due to the crude oil overcharges, neither was eligible for a crude oil refund.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Edward J. McDaniel et al	RF272–8294	9/19/88	150	$11,684
Glenn Pomerenke et al	RF272–11400	9/19/88	152	9,528
Robert Dill et al	RF272–11560	9/19/88	40	955

Dismissals

The following submissions were dismissed:

Name	Case No.
A&D Service Station	RF300–6293
Boro Service Station	RF300–6291
Chief Petroleum	RF265–0558
City of Greensboro	RF300–966
Dick's Exxon	RF307–271
Dillsburg Grain & Milling Co	RF300–6201
Don's Fairfield Exxon	RF307–267
Dorrell's Exxon	RF307–145
Durand Area Schools	RF272–43800
Farmers Coop Oil Co	RF272–67779
G.M.C. Delco-Remy Division	RF272–24129
George Yano	RF300–7062
Globe Industries	RF272–62887
Golten Marine Co., Inc	RF272–65776
Harner's Gulf	RF300–6279
Hayes, Bleakley, & Tobin, Inc	RF300–4624
Hoffman Oil Co., Inc	RF300–6790
Jackson County Board of Education.	RF300–4249
Madison County board of Education.	RF272–69212
McNabb Coal Co., Inc	RF300–5441
Morris Petroleum, Inc	RF300–5046
Ms. Priscilla M. Gray	KFA–0212
Rarick Coal & Oil Co	RF300–6191
Roy Dotson	RF272–65707
Spano Fuel Company, Inc	RF300–6465
Vernon Stoller	RF272–52778
3M Company	RF272–66542
Virdell Oil Co	RF300–4066

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

October 18, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–24667 Filed 10–24–88; 8:45 a.m.]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of September 26 Through September 30, 1988

During the week of September 26 through September 30, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

William A. Hewgley, 9/27/88, KFA–0213

William A. Hewgley filed an Appeal from a partial denial by the Office of the Inspector General (IG) of a Request for Information which Mr. Hewgley had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the Department of Energy (DOE) found that the name of a person allegedly contacted by the Central Intelligence Agency (CIA) through Mr. Hewgley was exempt from mandatory

disclosure pursuant to Exemption 6 of the FOIA. The DOE also found that the name of an IG employee who key punched material into a computer retrieval system was not exempt from disclosure under the FOIA. Important issues considered in the Decision and Order were: (i) The public interest in disclosure of the name of an individual who was allegedly contacted by the CIA versus that person's privacy interest in keeping such contacts secret, (ii) the substantial public interest in release of names of governmental employees performing ministerial tasks absent an important government interest, and (iii) the propriety of referring documents in DOE files to their originating federal agency for a FOIA determination.

Remedial Orders

Cities Service Oil and Gas Corp., 9/30/88, HRO–0285

Cities Service Oil and Gas Corporation (Cities) objected to a Proposed Remedial Order (PRO) that the DOE's Economic Regulatory Administration issued to the firm on March 25, 1985. In the PRO, the DOE found that Cities received consideration in 91 sales of price-controlled crude oil in excess of that permitted by 10 CFR 212.183(b). After considering the firm's objections, the DOE found that Cities used the artifice of matching purchase and sale contracts to disguise the excess consideration, which took the form of a discount in Cities' reciprocal purchase of exempt oil. The DOE rejected the firm's contention that its transactions fell within the "exchange exemption," 10 CFR 212.182. The DOE found that the exchange exemption did not apply because Cities' payment for the exempt crude oil did not reflect the value of that oil and because Cities' reciprocal transactions did not serve any of the historical and legitimate purposes of exchange which were to redistribute crude oil inventory with respect to quality, location, or time. Accordingly, the DOE issued a Remedial Order which requires Cities to refund $263.9 million plus interest.

Phoenix Petroleum Co., Steven B. Wyatt, 9/29/88, KRO–0190

Phoenix Petroleum Company and Steven B. Wyatt objected to a Proposed Remedial Order that was issued to them on September 12, 1985. In the PRO, the Economic Regulatory Administration found that Phoenix's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any historical and traditional crude oil reselling function.

In considering the objections, the DOE found that Phoenix's domestic crude oil resales violated the layering rule. The DOE rejected the argument that it lacked jurisdiction over Phoenix's transactions because they were alleged to be crude oil futures contracts. Moreover, the DOE found that even if Phoenix's transactions could be considered to be futures contracts, that would not deprive the DOE of jurisdiction over them. The DOE, however, agreed with the respondents that it did not have jurisdiction over two foreign sales of crude oil where there was no evidence that the crude oil ever entered the United States. In addition, the DOE determined that the overcharges alleged for January 1981 should be reduced to account for a portion of Phoenix's sales that may have taken place after crude oil was decontrolled on January 28. The DOE also held that the ERA had not convincingly matched Phoenix's purchases and sales. Under these circumstances, the DOE calculated Phoenix's refund liability to be the amount of the firm's gross profits from layered transactions.

Finally, the DOE found that Wyatt should be held personally liable for a portion of Phoenix's refund liability, because he was the person primarily responsible for negotiating the transactions in question and because he benefited substantially from the violations. The DOE determined, however, that on equitable grounds, he should not be held jointly and severally liable for Phoenix's entire refund liability, but his liability should be limited to the amount that he benefited from Phoenix's activities. This determination was based upon the fact that he was a junior officer and not an owner of Phoenix, and on the fact that he received only a small fraction of Phoenix's gross profits from the violations. As so modified, the PRO was issued as a final Order.

Refund Applications

Clarence J. Stallmann, 9/27/88, RF272–12616

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Clarence J. Stallmann based on his purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Stallmann used the products for various agricultural activities and determined his claim by estimating his consumption based on the total acres he farmed multiplied by the U.S. Department of Agriculture's (USDA) 23.8 gallons per acre average farm consumption figure. However, to this total Stallmann added gallonage estimates of propane used to dry corn and of motor oil and grease purchased for tractor use. Since the USDA estimate includes products utilized for tractor use and drying corn, the DOE denied the additional gallons, and approved the total based upon the USDA average farm consumption figure. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $8.

Exxon Corporation/ W.F. Parker Oil Company, Inc., Kilgore Oil Company, 9/30/88, RF307–1504, RF307–1566

The DOE issued a Decision and Order concerning Applications for Refund filed by W.F. Parker Oil Company, Inc. (Parker) and Kilgore Oil Company (Kilgore) in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeded $5,000. Instead of making an injury showing to receive its full allocable share, Parker and Kilgore each chose to elect the $5,000 threshold. Therefore, each firm was granted a refund of $5,647 (5,000 principal plus $647 interest).

Exxon Corporation/ Woodfield Fish & Oyster Company et al., 9/28/88, RF307–71 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $5,586 ($4,945 principal plus $641 interest).

Getty Oil Company/Paul & Wayne's Inc., 9/27/88, RF265–2671, RF265–2708

The DOE issued a Decision and Order concerning two Applications for Refund filed by a retailer of motor gasoline and middle distillates covered by a consent order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of Getty motor gasoline and middle distillates purchased from Getty. Under the procedures outlined in *Getty Oil Corp.* 15 DOE ¶ 85,064 (1986), the applicant elected to utilize the presumptive level of injury. The total amount of the refund approved in the

Decision and Order is $14,154, representing $6,903 in principal and $7,251 in interest.

Getty Oil Company/Supreme Oil Company, 9/26/88, RF265–0836, RF265–0837

The DOE issued a Decision and Order concerning two Applications for Refund filed by Supreme Oil Company (Supreme), a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. Supreme submitted documentation substantiating that during the consent order period it maintained banks of unrecovered increased product costs. Supreme also submitted purchase cost data for motor gasoline and middle distillates for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Supreme's refund should be limited to the gallons of motor gasoline and middle distillates that the firm purchased at above market prices. The total refund approved in this Decision is $22,153, representing $10,797 in principal and $11,356 in accrued interest.

Gulf Oil Company/CEE Ell Enterprises, et al., 9/27/88, RF300–1155 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each of the applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $11,383.

Gulf Oil Corp./City of Richardson et al., 9/29/88, RF300–1222, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund in the Gulf Oil Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser and end-user of Gulf covered products during the consent order period. Accordingly, the claimants were presumed to have been injured and received their full allocable share. The total amount of refunds granted in this Decision is $8,314, representing $6,569 in principal and $1,745 in interest.

Gulf Oil Company/Claude Bridges et al., 9/28/88, RF300–5803 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Gulf Oil Company special refund processing. Each of the applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf products during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $12,274.

Gulf Oil Company/William Mofford, et al., 9/29/88, RF300–1106, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $17,043.

Husky Oil Company/Sandhill Oil Company, Inc., 9/29/88, RF161–36

The DOE issued a Decision and Order concerning an Application for Refund filed by Sandhill Oil Company, Inc. (Sandhill) in the Husky Oil Company (Husky) special refund proceeding. Sandhill filed a claim for $1,071 based upon 2,348,547 gallons of motor gasoline and diesel fuel purchased from Husky during the firm's consent order period. Sandhill claimed an additional refund of $3,374 based upon the loss of a "prompt payment" discount Husky discontinued during a portion of the consent order period. With respect to the above-volumetric refund claim, Sandhill failed to demonstrate that it did not increase its prices to compensate for the loss of the discount. Without this information, the DOE could not determine that Sandhill was injured by the lost discount. However, the DOE determined that Sandhill should be granted a refund on a volumetric basis, since its claim was less than the $5,000 small claims threshold level established in *Husky Oil Co.*, 13 DOE ¶ 85.045 (1985). Accordingly, the applicant was granted a refund of $1,566, representing $1.071 in principal plus $495 in accrued interest.

Kenneth Veazie, 9/30/88, RF272–74940

The DOE issued a Decision and Order rescinding part of the prior Decision issued to Kenneth Veazie in the crude oil refund proceeding. On reexamination, the DOE determined that it misapplied the claimant's method of estimation of gallons claimed. The DOE increased the applicant's approved volume to 100,459 gallons. The refund granted in this Decision is $20.

Standard Oil Co. (Indiana)/North Carolina, 9/27/88, RM251–123

The DOE issued a Decision and Order approving the Motion for Modification filed by the State of North Carolina in the Standard Oil Co. (Indiana) Special Refund Proceeding. North Carolina requested permission to transfer $200,000 from a newspaper advertising campaign for a fuel oil furnace tune-up rebate program to a multimedia campaign for a home insulation program. The DOE approved the new program because it would reach more injured consumers than the original, and would provide substantial incentives to save energy costs in the future.

Tony Coller, 9/29/88, RF272–74860

The DOE issued a Decision and Order rescinding the crude oil refund approved for Tony Coller in the DOE's August 22, 1988 Decision and Order, *J.W. Millane, et al.* (Case No. RF272–37485). Mr. Coller had requested that the DOE rescind his refund.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Baker Farms Inc. et al	RF272-9400	9/28/88	151	$4,696
George F. Mahan et al	RF272-1900	9/28/88	24	717
Village of Arnold et al	RF272-11103	9/29/88	84	11,006

Dismissal

The following submissions were dismissed:

Name	Case No.
Carteret County Board of Education.	RF300-4274
College Gulf Station	RF300-7769
Consumers Cooperative Society	RF272-59129
County of Hanover	RF300-4811
Dallas County Schools	RF300-7893
First Maryland Bancorp	RF272-70856
Frank Guinta's Exxon I	RF307-220, RF307-221
Fritsch's Exxon	RF307-174
Harry's Service Station	RF300-2954
Hedden Country Store	RF300-7054
Lindsey Oil Company	RF272-62456
Loney's Gulf	RF300-7944
Morris Oil Services, Inc	RF300-876
Murphy Bateman Building Supplies	RF272-58094
Paxville Road Exxon	RF307-846
Schwarz Oil Co	RF265-0553
Seddons Service Station	RF300-2787
Sell's Texaco Service	RF272-10186
State of Missouri, Dept. of Natural Resources.	RF40-3708 RF225-11047
Tabbert Oil Company	RF300-8843
The Valley Line Company	RF300-1004
Tom's Bunker Hill Gulf	RF300-3649
Universal Motor Fuels, Inc	RF265-1353
West End Exxon	RF307-1766
Williams Gulf Service	RF300-10153

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Mangement: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 18, 1988.

[FR Doc 88-24668 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,083,442 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Amorient Petroleum Company, California. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986.).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0101.

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) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Amorient Petroleum Company, California. The funds are being held in an interest-bearing account pending distribution by the DOE.

The DOE has tentatively determined to distributre these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharges monies are divided among the state, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumptiopn of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submisson of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 17, 1988

George B. Breznay,

Director, Office of Hearings and Appeals.

October 17, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Amorient Petroleum Company, California.

Date of Filing: February 8, 1988.

Case Number: KEF-0101

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for funds obtained from Amorient Petroleum Company, California (Amorient) in the amount of $1,083,442 and remitted to the DOE pursuant to a July 8, 1985 Consent Order between the firm and the DOE, Consent Order number 940X00168Z. An additional $167,984 in interest has accrued on that amount as of August 31, 1988. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the money received from Amorient and have determined that such procedures are appropriate.

The Amorient Consent Order refers to the firm's sales of crude oil and refined petroleum products during the period from August 19, 1973 through January 27,

1981. However, after reviewing the ERA audit file concerning Amorient's pricing practices, we find that it is likely that the firm sold only crude oil during the Consent Order period.[1] We therefore propose to distribute the Amorient consent order funds in accordance with the refund procedures established in other crude oil proceedings. Before setting forth those procedures, we will first summarize the background of the DOE crude oil refund process.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 F.R. 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 F.R. 11737 (the April 1987 Notice). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378, settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, in calculating the per gallon volumetric refund amount, the OHA could utilize a portion of the M.D.L. 378 overcharge monies. The latter ruling was recently affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,604 (Temp. Emer. Ct. App. 1988).

II. Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, $1,083,442 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $216,688 plus interest for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel.*) As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone*, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($1,083,442) by the total consumption of petroleum products in the United States

[1] This finding in no way represents a determination on any of the factual or legal issues involved in the Amorient enforcement proceeding that was settled by the Consent Order. Rather, it represents our determination as to the most equitable and efficient method of treating the Amorient Consent Order funds for purposes of this Subpart V proceeding.

during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[2] This yields a volumetric refund amount of $0.000000536 per gallon for the proceeding involved in this determination. We propose to adopt a deadline of October 31, 1989 for refund applications submitted pursuant to this Decision. *See World Oil Corp.*, 17 DOE ¶ 85,658 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application. A deadline of June 30, 1988 was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 16 DOE ¶ 85,681 (1987); *Allerkamp*, 17 DOE at 88,178; *Shell Oil*, 17 DOE at 88,408. Accordingly, any applicant that now files a refund application will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $866,754 plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register.**

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Amorient Petroleum Company, California pursuant to the Consent Order executed July 8, 1985 will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-24670 Filed 10-24-88; 8:45 am]
BILLING CODE 6450-01-M

[2] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments amoung themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $34,720,020.90 plus accured interest, in alleged crude oil overcharge funds obtained from Wickett Refining Company (Case No. KEF-0099), Pennzoil Company (Case No. KEF-0104), Sun Company (Case No. KEF-0105), and Phillips Petroleum Company (Case No. KEF-0111). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to the appropriate consent order firm's case number.

FOR FURTHER INFORMATION CONTACT: Miss Darlene Gee, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice s hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has tentatively decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to te states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independene Avenue, SW., Washington, DC 20585.

Dated: October 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 17, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
Wickett Refining Company
Pennzoil Company
Sun Company
Phillips Petroleum Company
Dates of Filing:
January 11, 1988
March 10, 1988
March 10, 1988
June 24, 1988
Case Numbers:
KEF–0099
KEF–0104
KEF–0105
KEF–0111

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Wickett Refining Company, Pennziol Company, Sun Company, and Phillips Petroleum Company. These four firms remitted a total of $34,720,020.90 to the DOE.[1] This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR. 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applications for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), *Ernest A. Alerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. The latter ruling was recently affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 855 F.2d 865 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $34,720,020.90 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $6,944,004.18 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for

[1] Wickett Refining Co. remitted $850,000 to the DOE pursuant to a June 9, 1987, Consent Order between Wickett and the DOE. Consent Order number NOOS90122Z; Pennzoil Company remitted $1,370,020.90 pursuant to a settlement approved on May 12, 1987, Consent Order Number NPNC00301Z; Sun Company remitted $2,500,000 pursuant to a Consent Order entered into on November 23, 1987, Consent Order Number CSNZ00000Z; and Phillips Petroleum Company remitted $30,000,000 pursuant to a settlement approved on April 4, 1988, Consent Order Number NPHE00601Z.

refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of products purchased during the period of crude oil price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury can be rebutted by the States if they provide evidence to show that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicant who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987), *reconsideration denied*, 16 DOE ¶ 85,494 (1987), *aff'd, In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. December 7, 1987) (Opinion and Order); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($34,720,020.90) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[2] This yields a volumetric refund amount of $0.00001718 per gallon for the four proceedings involved in this determination. We propose to adopt a deadline of October 31, 1989, for refund applications submitted pursuant to this Decision. *See World Oil Corp.*, 17 DOE ¶ 85,658 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application. A deadline of June 30, 1988, was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 16 DOE at 89,339; *Allerkamp*, 17 DOE at 88,178; *Shell Oil*, 17 DOE at 88,408. Any applicant that files a refund application after that deadline will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the *Federal Register*.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $27,776,016.72 plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company, pursuant to the Consent Orders executed respectively on June 9, 1987, May 12, 1987, November 23, 1987, and April 4, 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-24671 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

[2] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3466-8]

Redesignation of Areas for Air Quality Planning Purposes; Missouri

AGENCY: Environmental Protection (EPA).

ACTION: Notice.

SUMMARY: This notice recognizes the current air quality conditions in the Kansas City, Missouri, area (Jackson County) relative to the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). The current air quality status for the city of Kansas City is unclassified/attainment. Based upon current air quality measurements, the classification will remain unchanged. No violations of the air quality standard have been recorded in the area for the years 1984 to 1987.

EFFECTIVE DATE: This notice will become effective on October 25, 1988.

ADDRESSES: Copies of the state submittal are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: The 1977 Clean Air Act Amendments required,

pursuant to Section 107(d) of the Act, that EPA publish a list of air quality control regions, or portions thereof, reflecting their attainment, nonattainment, or unclassified status for all criterial pollutants. Subsequently, on March 3, 1978, EPA designated the Kansas City, Missouri (Jackson County) area as unclassified for CO meaning that there were not sufficient monitoring data available to support either an attainment or a nonattainment designation. At 40 CFR Part 81, Subpart C, the areas of the state which are attainment, nonattainment, or unclassified for one or more pollutants are identified. Unclassified and attainment designations are list under the same column in 40 CFR Part 81; therefore, there will be no changes made in § 81.326 (Remainder of State) except to inform the public by way of this notice.

The state submitted a request to EPA on April 4, 1988, to change the area from unclassified to attainment. The NAAQS for CO specified in 40 CFR 50.8 state that not more than once in a year will CO concentrations exceed either: (1) The maximum allowable eight-hour concentration of 9 parts per million (ppm) of air, or (2) the maximum allowable one-hour concentration of 35 ppm. Included with the state's request was an attainment demonstration document which includes three years of air quality data showing attainment of the NAAQS for CO in the Kansas City area. It also includes mobile source CO emissions modeling using MOBILE–3 to show the effects of the Federal Motor Vehicle Emission Control Program (FMVECP) in the Kansas City area, as well as point source CO emission inventory.

This document also shows that the total CO emissions in the Kansas City area have been reduced by about 16 percent from 1984 to 1987. The FMVECP should ensure that this reduction will continue as new vehicles replace older vehicles on the highways and, therefore, the Kansas City area should remain in attainment of the CO standards in the future.

Date: September 9, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–24595 Filed 10–24–88 8:45 am]

BILLING CODE 6560–50–M

[FRL–3466–9]

Announcement of Actions Taken Under NSPS/NESHAP/PSD Regulations; Iowa, Kansas, and Missouri

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under the federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR Part 52 (specifically, 40 CFR 52.21); the federal Standards of Performance for New Stationary Sources (a.k.a., New Source Performance Standards, NSPS) regulation, 40 CFR Part 60; and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, 40 CFR Part 61:

(A) The following PSD permits were revised:

University of Iowa, Iowa City, Iowa: The PSD permit was issued to the University on June 9, 1987, for Boiler 11. Certain different scenarios for operation of other boilers at the University in conjunction with Boiler 11 were approved in the permit. Scenario A restricted operating conditions when Boilers 5, 10, and 11 were operating simultaneously. The permit was revised to include Boiler 6 in Scenario A if Boiler 5 is not operating. Scenario A now applies to Boilers 5 or 6, 10, and 11. Scenario C, which applied to Boilers 6, 10, and 11, was deleted. All other provisions of the permit remain in effect unchanged. *Revision Issued:* January 19, 1988.

Archer Daniels Midland Company, Cedar Rapids, Iowa: The PSD permit was issued to the company on October 21, 1986, for two coal-fired circulating fluidized bed boilers, each with a maximum heat input of 551.5 million British thermal units per hour (MMBtu/hr). The permit set forth an emission limit for fluorides of 1.5 pounds per hour, 3-hour average. The permit was unclear as to whether the emission limit applied to the emissions from each boiler or from both boilers. The revision set forth an emission limit for fluorides of 0.75 pounds per hour, 3-hour average, for each boiler. All other provisions of the permit remain in effect unchanged. *Revision Issued:* February 25, 1988.

Iowa State University, Ames, Iowa: The PSD permit was issued to the University on December 15, 1986, for two coal-fired circulating fluidized bed boilers. The permit was revised to permit the combustion of low sulfur western coal in addition to Iowa coal. Limits were placed on the following pollutants from western coal: nitrogen oxides, sulfur dioxide, carbon monoxide, fluoride, lead, and beryllium. The continuous monitoring requirements in the permit were also revised to include nitrogen oxides, and oxygen or carbon dioxide. The owner/operator of the boilers must notify EPA whenever approved fuel supplies are changed. Combinations of the different fuels may be used only upon EPA approval. All other provisions of the permit remain in effect unchanged. *Revision Issued:* June 3, 1988.

KPL Gas Service, Topeka, Kansas: The PSD permit was issued to the company on March 30, 1978, for the Jeffrey Energy Center. On May 6, 1985, EPA granted the company a 3-year construction delay for Unit 4 thus allowing construction to be discontinued until January 1, 1988. On December 18, 1987, the company requested another 3-year construction delay period for proposed Unit 4. The request was denied. The subject PSD permit expired January 1, 1988. EPA chose to not re-issue the permit because of the length of time which has lapsed and the uncertainty of future construction of Unit 4. If the company wishes to resume construction on Unit 4, it must first obtain a valid PSD permit from the Kansas Department of Health and Environment. *Decision Issued:* April 26, 1988.

(B) The following decisions relating to NSPS applicability were issued:

Tower Rock Stone Company, Sainte Genevieve, Missouri: Upon review of information received from the source, EPA has determined that ten individual pieces of equipment at Tower Rock Stone's Ste. Genevieve plant are affected facilities under 40 CFR Part 60, Subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are listed as follows: Conveyors numbered 1, 2, 4, 5, 6, and 7; the 42" x 50" Baxter Jaw Crusher; the 5' x 20' A. C. Pan Feeder; the 6' x 26' A. C. Pan Feeder; and the 6' x 16' Pioneer Screen. Construction of these facilities, as per the definition in 40 CFR § 60.2, commenced after the August 31, 1983, applicability date of Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* April 13, 1988.

University of Missouri-Columbia, Columbia, Missouri: The University commenced construction of a 260 million British thermal unit per hour (MMBtu/hr), circulating fluidized bed boiler subject 40 CFR Part 60, Subparts D and Db. Because the University commenced construction after the Subpart D applicability date and after the Subpart Db applicability date for the pollutants nitrogen oxides (NO_x) and particulates,

the boiler is subject to two different Subparts. This boiler is subject to the particulate and NO_x standards of Subpart Db and the SO_2 standards in Subpart D. The boiler is not affected by the SO_2 standards of Subpart Db because the University commenced construction of the boiler before the SO_2 applicability date in Subpart Db. *Decision Issued:* December 16, 1987.

Leo Journagan Construction Co., Inc., Springfield, Missouri: Upon review of information received from the source, EPA has determined that 23 individual pieces of equipment at Journagan's Shell Rock Quarry in Shell Knob, Missouri are affected facilities under 40 CFR Part 60, Supart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are listed as follows: the primary and secondary crushers; the primary and secondary screens; five surge bins 13 conveyors; and an elevator. Construction of these facilities, as per the definition in 40 CFR § 60.2, commenced after the August 31, 1983, applicability date in Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* September 23, 1987.

J.H. Berra Construction Co., Inc., Saint Louis, Missouri: Upon review of information received from the source, EPA has determined that six individual pieces of equipment at J.H. Berra's Riverview Quarry South in Antonia, Missouri, are affected facilities under 40 CFR Part 60, Subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are as follows: three storage bins and three conveyors. Construction of these facilities, as per the definition in 40 CFR 60.2, commenced after the August 31, 1983, applicability date in Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* August 21, 1987.

(C) The following decisions relating to NESHAP approval requests were issued:

Washington University School of Medicine, Saint Louis, Missouri: The University was granted as approval to construct and operate a radionuclide installation at its power plant in St. Louis, Missouri. The boiler and incinerator at the installation are affected by the requirements of Subpart I of the NESHAP regulations, 40 CFR Part 61. The approval limited the usage of Hydrogen-3 at the facility to no more than 100 millicuries per year and Carbon-14 to no more than 20 millicuries per year. *Approval Issued:* August 23, 1988.

Gardner Asphalt Corporation, Kansas City, Kansas: Gardner Asphalt submitted applications to EPA on November 17, 1987, and January 11, 1988, for a determination of NESHAP regulation applicability and approval of the construction. It was determined that the plant is subject to NESHAP Subpart M. The company was granted an approval to construct and operate an asbestor manufacturing plant in Kansas City, Kansas. *Approval Issued:* March 7, 1988.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) dasys from the date of publication of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements. The above determinations do not relieve the applicable sources of their responsibilities under other federal, state, and local regulations.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit except for actions in Kansas. The Tenth Circuit of the U.S. Court of Appeals is the appropriate Court for actions in Kansas. A petition for review must be filed on or before December 27, 1988.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Toxics Division, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, ARTX, or Edwin G. Buckner at 913/236–2896 (FTS: 757–2896).

Date: October 12, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–24596 Filed 10–24–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140103; FRL–3467–4]

Access to Confidential Business Information by Westat, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Westat, Incorporated (WES) of Rockville, MD for access to information which has been submitted to EPA under sections 4, 6, 8, and 11 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. Existing chemical substances, i.e., those listed on the TSCA inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Under section 11 of TSCA, EPA can subpeona information and testimony of witnesses to carry out TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that WES will require access to CBI submitted to EPA under sections 4, 6, 8, and 11 of TSCA to perform successfully work specified under the contract. Access to TSCA CBI by WES under this contract is being announced for the first time. EPA is issuing this notice to inform all submitters of information under sections 4, 6, 8, and 11 of TSCA that EPA may provide WES access to these materials on a need-to-know basis.

Under contract no. 68–02–4293, WES, 1650 Research Boulevard, Rockville, MD, will assist the Office of Toxic Substances' Exposure Evaluation Division in its review of information concerning PCB contaminated shredder fluff including information submitted under subpeonas issued under TSCA section 11. All access to TSCA CBI under this contract will take place at EPA Headquarters and WES's facility. Upon completing review of the CBI materials, WES will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

WES has been authorized for access to TSCA CBI at its facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the WES security plan, has performed the required inspection of its facility, and has found them to be in compliance with the requirements of the manual. WES personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security

procedures before they are permitted access to TSCA CBI.

Dated: October 16, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24591 Filed 10-24-88 8:45 am]

BILLING CODE 6560-50-M

[FRL-3467-2]

Extension of Comment Period; Proposed Issuance of a National Pollutant Discharge Elimination System Permit in the State of Florida

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of public notice comment period.

SUMMARY: EPA Region IV published a notice on August 25, 1988 in 53 FR 32442 concerning the issuance of a National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG040001 in the State of Florida. The proposed NPDES general permit contains effluent limitations, prohibitions, reporting requirements and other conditions applicable to facilities which discharge or propose to discharge treated groundwater and/or stormwater incidental to the groundwater cleanup operation contaminated by automotive gasoline, aviation and/or diesel fuels. During the 30-day comment period, Region IV received requests from the Florida Petroleum Council and the American Petroleum Institute to extend the public comment period or hold a public hearing since the proposed draft permit raised issues of potentially significant concern to the petroleum industry.

In light of these requests for an extension, the public comment period is being extended until the close of business day on November 15, 1988. All comments submitted from August 25, 1988 until the close of this extension will be considered in the formulation of a final determination regarding this permit. This extension is made under authority of 40 CFR 231.8.

FOR FURTHER INFORMATION CONTACT: Mr. Roosevelt Childress, Chief, South Area Permits Unit, Facilities Performance Branch, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365, (404) 347-3012.

Dated: October 18, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-24597 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 14, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0128

Title: Application for Private Land Mobile and General Mobile Radio Services

Action: Revision

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 142,294 Responses, 15 minutes to six hours each (average four hours)

Needs and Uses: Filing is required for a new or modified authorization. The data is used to determine the applicant's eligibility, and for rulemaking proceedings, enforcement purposes, maintaining the automated data base, and issuing the authorizations.

OMB No.: 3060-0132

Title: Supplemental Information 72-76 MHz Operational Fixed Stations

Action: Extension

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 300 Responses, 30 minutes each

Needs and Uses: Applicants for authorization and use of frequencies within the band 72-76 MHz must agree to take whatever action is necessary to eliminate any harmful interference to TV reception on Channels 4 and 5 caused by their operation. This supplemental data is collected from applicants in certain locations to determine if they meet the requirements for the authorization.

Federal Communications Commission.

Donna R. Searcy,

Federal Communications Commission.

[FR Doc. 88-24642 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearings; Lansing Community College et al.

I.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

Applicant, and City/ State	File No.	MM Docket No.
A. Lansing Community College; DeWitt, Michigan.	BPED-870911MA.	88-425
B. American Indian Broadcast Group, Inc.; Dewitt, Michigan.	BPH-870914MC	
C. Mid Michigan FM, Inc.; Dewitt, Michigan.	BPH-870914MR	
D. William E. Kuiper, Jr.; Dewitt, Michigan.	BPH-870914MT	
E. Great Lakes FM Limited Partnership; Dewitt, Michigan.	BPH-870914MU	
F. DeWitt Radio Incorporated Dewitt, Michigan.	BPH-870914MV	

Issue Heading and Applicant

1. [See Appendix), B
2. Comparative, All Applicants
3. Ultimate, All Applicants

APPENDIX

Additional Issue Paragraph

1. To determine (a) the facts and circumstances surrounding the certification of B (Group)'s application by Mr. Jack Bursack and whether it was appropriately certified; and (b) in light of the evidence adduced under the foregoing issue, the impact upon B (Group)'s basic qualifications to be a broadcast licensee.

II.

Applicant, and City/ State	File No.	MM Docket No.
A. Radio Delaware, Inc.; Delaware, OH.	BPH-870604MB	88-422
B. Adams Broadcasting Corporation; Delaware, OH.	BPH-870615MO	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

III.

Applicant, and City/ State	File No.	MM Docket No.
A. William L. Zawila; San Joaquin, CA.	BPH-850711PJ	88-430
B. Susan Lundgorg; San Joaquin, CA.	BPH-850712TE	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

IV.

Applicant, and City/ State	File No.	MM Docket No.
A. Swanton Radio Limited Partnership; Sawanton, Ohio.	BPH-870827MT	88-432
B. Welch Communications, Inc.; Swanton, Ohio.	BPH-870827MY	
C. Nunn Corporation; Swanton, Ohio.	BPH-870827NQ	
D. Swan Creek Communications; Swanton, Ohio.	BPH-870827NJ	

Issue Heading and Applicants

1. Air Hazard, A
2. Comparative, A, B, C & D
3. Ultimate, A, B, C & D

V.

Applicant, and City/ State	File No.	MM Docket No.
A. Matthew D. Markel and Paul G. Kriegler a/b/a M & K Communications; Bennington, NE.	BPH-871109MB	88-439
B. Nebraska Broadcast Limited Partnership; Bennington, NE.	BPH-871109MJ	
C. Greg Esquible; Bennington, NE.	BPH-871109MO	

Issue Heading and Applicant(s)

1. Ultimate, A, B & C
2. Comparative, A, B & C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-24643 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

[Rept. No. CL-88-172]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 4 Cellular RSAs

September 29, 1988.

During the months of December 1988 and January 1989, applications for Blcok 4 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (Enter Market Number), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note: If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Acceptance of Applications for Cellular RSAs in Block 4

December 7-9, 1988

New Jersey

550. New Jersey 1—Hunterdon
551. New Jersey 2—Ocean
552. New Jersey 3—Sussex

New York

559. New York 1—Jefferson
560. New York 2—Franklin
561. New York 3—Chautauqua
562. New York 4—Yates
563. New York 5—Otsego
564. New York 6—Columbia

Pennsylvania

612. Pennsylvania 1—Crawford
613. Pennsylvania 2—McKean
614. Pennsylvania 3—Potter
615. Pennsylvania 4—Bradford
616. Pennsylvania 5—Wayne
617. Pennsylvania 6—Lawrence
618. Pennsylvania 7—Jefferson
619. Pennsylvania 8—Union
620. Pennsylvania 9—Greene
621. Pennsylvania 10—Bedford
622. Pennsylvania 11—Huntingdon
623. Pennsylvania 12—Lebanon

Rhode Island

624. Rhode Island 1—Newport

December 14-16, 1988

Maryland

467. Maryland 1—Garrett
468. Maryland 2—Kent
469. Maryland 3—Frederick

West Virginia

701. West Virginia 1—Mason
702. West Virginia 2—Wetzel
703. West Virginia 3—Monongalia
704. West Virginia 4—Grant
705. West Virginia 5—Tucker
706. West Virginia 6—Lincoln
707. West Virginia 7—Raleigh

Virginia

681. Virginia 1—Lee
682. Virginia 2—Tazewell
683. Virginia 3—Giles
684. Virginia 4—Bedford
685. Virginia 5—Bath
686. Virginia 6—Highland
687. Virginia 7—Buckingham
688. Virginia 8—Amelia
689. Virginia 9—Greensville
690. Virginia 10—Frederick
691. Virginia 11—Madison
692. Virginia 12—Caroline

January 4-6, 1989

Delaware

359. Delaware 1—Kent

Michigan

472. Michigan 1—Gogebic
473. Michigan 2—Alger
474. Michigan 3—Emmet
475. Michigan 4—Cheboygan
476. Michigan 5—Manistee
477. Michigan 6—Roscommon
478. Michigan 7—Newaygo
479. Michigan 8—Allegan
480. Michigan 9—Cass
481. Michigan 10—Tuscola

Ohio

585. Ohio 1—Williams
586. Ohio 2—Sandusky
587. Ohio 3—Ashtabula
588. Ohio 4—Mercer
589. Ohio 5—Hancock
590. Ohio 6—Morrow
591. Ohio 7—Tuscarawas
592. Ohio 8—Clinton
593. Ohio 9—Ross
594. Ohio 10—Perry
595. Ohio 11—Columbiana

January 11–13, 1989

Connecticut

357. Connecticut 1—Litchfield
358. Connecticut 2—Windham

Kentucky

443. Kentucky 1—Fulton
444. Kentucky 2—Union
445. Kentucky 3—Meade
446. Kentucky 4—Spencer
447. Kentucky 5—Barren
448. Kentucky 6—Madison
449. Kentucky 7—Trimble
450. Kentucky 8—Mason
451. Kentucky 9—Elliott
452. Kentucky 10—Powell
453. Kentucky 11—Clay

Maine

463. Maine 1—Oxford
464. Maine 2—Somerset
465. Maine 3—Kennebec
466. Maine 4—Washington

Massachusetts

470. Massachusetts 1—Franklin
471. Massachusetts 2—Barnstable

New Hampshire

548. New Hampshire 1—Coos
549. New Hampshire 2—Carroll

Vermont

679. Vermont 1—Franklin
680. Vermont 2—Addison

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–24187 Filed 10–24–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bradley County Financial 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 November 10, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bradley County Financial Corp.*, Cleveland, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Cleveland, Cleveland, Tennesssee.

2. *First Santa Rosa Banc Shares, Inc.*, Milton, Florida; to become bank holding company by acquiring 100 percent of the voting shares of First National Bank of Santa Rosa County, Milton, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dumas Bancshares, Inc.*, Dumas, Arkansas; to acquire at least 80 percent of the voting shares of First State Bank, Gould, Arkansas.

2. *Monticello Bankshares, Inc.*, Monticello, Kentucky; to acquire at least 34.1 percent of the voting shares of Bank of Clinton County, Albany, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Suburban Bancorporation, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire Suburban National Bank, Eden Prairie, Minnesota.

2. *Winter Park Bancshares, Inc.*, Winter, Wisconsin; to acquire 86.82 percent of the voting shares of Owen-Curtiss Financial Corporation, Owen, Wisconsin, and thereby indirectly acquire 95.75 percent of the voting shares of Owen-Curtiss State Bank, Owen, Wisconsin; and 50 percent of the voting shares of Gilman Corporation, Gilman, Wisconsin, and thereby indirectly acquire 87 percent of the voting shares of State Bank of Gilman, Gilman, Wisconsin.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kersey Bancorp, Inc.*, Kersey, Colorado; to acquire 94.5 percent of the voting shares of The Platteville State Bank, Platteville, Colorado.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Vineyard National Bancorp*, Rancho Cucamonga, California; to become a bank holding company by acquiring 100 percent of the voting shares of Vineyard National Bank, Rancho Cucamonga, California.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–24537 Filed 10–24–88; 8:45 am]

BILLING CODE 6210-01-M

Chemical Banking Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies, or to engage in such an activity. Unless otherwise noted, these 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 November 16, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical Banking Corporation,* New York, New York; to acquire 100 percent of the voting shares of Horizon Bancorp, Morristown, New Jersey, and thereby indirectly acquire Horizon Bank, Morristown, New Jersey; Marine National Bank, Pleasantville, New Jersey; Princeton Bank, Princeton, New Jersey; and Horizon Trust Company, N.A., Morristown, New Jersey.

In connection with this application, Applicant also proposes to acquire Horizon Brokerage Services, Inc., and thereby engage in discount brokerage services pursuant to § 225.25(b)(15); and Horizon Trust Company of Florida, N.A., Boca Raton, Florida, and thereby engage in corporate trust operations and services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24538 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Comerica Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged 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 November 10, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to engage *de novo* in providing employee benefits consulting services to other business organizations. This activity has been approved by Board Order. *Norstar Bancorp, Inc.,* 71 Fed. Res. Bull. 656 (1985).

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24539 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

First Virginia Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.,* Falls Church, Virginia; to engage *de novo* through its subsidiary, First Virginia Life Insurance Company, Falls Church, Virginia, in acting as principal for insurance that is directly related to extensions of credit made by banking subsidiaries and which is limited to insuring the repayment of the outstanding balances due on the extensions of credit in the event of the

death or disability of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Financial Corporation, Inc.*, Liberal, Kansas; to engage *de novo* in direct lending activities under § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coble Bankshares, Inc.*, Hewitt, Texas; to engage *de novo* through its subsidiary, Global Mortgage, Inc., Waco, Texas, in arranging mortgage loans for customers of financial institutions, including location of funding sources and processing of applications and other necessary documentation pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24540 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 10, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to acquire Brokers Securities, Inc., Norfolk, Virginia, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by November 8, 1988.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City Missouri 64198:

1. *United Bancshares of Nebraska, Inc.*, Omaha, Nebraska; to acquire Fremont Computer Services, Inc., Omaha, Nebraska, and thereby engage in providing to others data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire State Financial Services, Inc., Bend, Oregon, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Comments on this application must be received by November 8, 1988.

2. *Western Community Bancorp, Inc.*, Corona, California to acquire S and S Finance Company, Orange, California, and thereby engage in consumer finance activities pursuant to § 225.25(b)(1)(i) and the sale of credit-related life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24541 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

S. W. Grotenhuis; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 8, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *S. W. Grotenhuis*, Casey, Illinois; to acquire 45 percent; Audrey G. Kumley, Cedar Rapids, Iowa, to acquire 45 percent; and Lena M. Doran, Casey, Illinois, to acquire 10 percent of the voting shares of Green City Bancshares, Inc., Green City, Missouri, and thereby indirectly acquire Farmers Bank of Green City, Green City, Missouri.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24542 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Herbert S. Kendrick, Jr.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Herbert S. Kendrick, Jr.*, Brownfield, Texas, to acquire 52.31 percent; Kirby McDaniel Kendrick Children's Irrevocable Trust, Dallas, Texas, to acquire 8.72 percent; and Sam K. Kendrick Testamentary Trust, Dallas, Texas, to acquire 26.15 percent of the voting shares of Bandera Bancshares, Inc., Bandera Texas, and thereby indirectly acquire Bandera Bank, Bandera, Texas. In conjunction with this notice, Sam K. Kendrick Testamentary Trust, Dallas, Texas, also proposes to acquire 25 percent of the voting shares of Pedernales Investment Corporation, Johnson City, Texas, and thereby indirectly acquire Johnson City Bank, Johnson City, Texas.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francico, California 94105:

1. *Richard W. Arendsee*, Rancho Santa Fe, California, together with the Kawa Irrevocable Trust, Rancho Santa Fe, California, of which he is trustee, and Wak Enterprises, Rancho Santa Fe, California, a California limited partnership of which he is a managing partner; to acquire 13.26 percent of the voting shares of Southwest Bancorp, Vista, California, and thereby indirectly acquire Southwest Bank, Vista, California, and Southwest Thrift and Loan Association, Escondido, California.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24543 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

The Long-Term Credit Bank of Japan et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consumation 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Long-Term Credit Bank of Japan*, Tokyo, Japan; to engage *de novo* through its subsidiary, LTCB Capital Markets, Inc., in making, acquiring, and servicing loans or other extensions of credit, issuing letters of credit and accepting drafts for Company's account or for the account of others, pursuant to § 225.25(b)(1); and leasing personal property and real property and acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to engage *de novo* through its subsidiary, Guaranty Financial Corp., Philadelphia, Pennsylvania, in providing tax planning and preparation services to individuals, businesses and nonprofit organizations pursuant to 225.25(b)(21); and providing advice, and possible education courses and instructional materials, to consumer on individual financial management matters, including tax planning, retirement and estate planning, budget management, debt consolidation and bankruptcy, applying for mortgages and general investment management pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24544 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Ben M. Robertson*, and Mary E. Roberton, both of Maryville, Tennessee; to acquire an additional 8.3 percent of the voting shares of Twin Cities Financial Services, Inc., Maryville, Tennessee, and thereby indirectly acquire Citizens Bank of Blount County, Maryville, Tennessee, as result of a stock redemption.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beatrice Gilmore*, Algona, Iowa; to acquire 14.36 percent of the voting shares of Mid-Iowa Bancshares, Co.,

Algona, Iowa, and thereby indirectly acquire Iowa State Bank, Algona, Iowa.

2. *Lincoln National Corporation,* Fort Wayne, Indiana; to acquire 24.9 percent of the voting shares of Lincoln Financial Corporation, Fort Wayne, Indiana, and thereby indirectly acquire Akron Exchange State Bank, Akron, Indiana; Angola State Bank, Angola, Indiana; The City National Bank of Aurburn, Aurburn, Indiana; Farmers & Merchants Bank, Bluffton, Indiana; The First State Bank of Decatur, Decatur, Indiana; Lincoln National Bank and Trust Co., Fort Wayne, Indiana; Community State Bank in Huntington, Shipshewana, Indiana; Shipshewana State Bank, Shipshewana, Indiana; The First National Bank in Wabash, Wabash, Indiana; Heritage Bank, Berrien Springs, Michigan; The Bank of Three Oaks, Three Oaks, Michigan; Rush County National Bank, Rushville, Indiana; and The Peoples Bank & Trust Company, Van Wert, Ohio.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Eugene Allen,* Meridian, Texas, to acquire 16.77 percent; Ray J. Miller, Meridian, Texas, to acquire 14.75 percent; and Cecil Wimberly, Meridian, Texas, to acquire 14.75 percent of the voting shares of Bosque Corporation, Meridian, Texas, and thereby indirectly acquire Bosque County Bank of Meridian, Meridian, Texas.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24545 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al.; Formations of, Acquisitons 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 November 10, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia, and Sovran Financial Corporation/Central South, Nashville, Tennessee; to acquire 100 percent of the voting shares of First National Bank of Collierville, Collierville, Tennessee.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Collins Bankcorp, Inc.,* Collins, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Collins State Bank, Collins, Wisconsin.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24546 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities: Correction

This notice replaces the notice appearing Thursday, September 29, 1988, and corrects the title of the collection.

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, Public Voucher for Transportation Charges, SF-1113.

AGENCY: Office of Transportation Audits, Federal Supply Service, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW; Washington, DC 20405.

Annual Reporting Burden: Although the number of firms responding is not known, approximately 2.5 million SF 1113's are filed per year, taking approximately 20,833 hours to complete. However, information provided on the SF 1113 is the same as that supplied to commercial clients using commercial freight bills. An analysis of 83 private industry vouchers revealed an average of 14 data elements per voucher. The SF 1113 has only 10 data elements. The Government supplies most of the information for the GBL. Therefore, the Government forms are less burdensome to industry than use of private industry vouchers.

Purpose: Standard Form (SF) 1113 is for use by carriers in billing charges for freight, express, or passenger transportation furnished to the U.S. Government.

FOR FURTHER INFORMATION CONTACT: Betty J. Brown, (202) 786-3011.

Copy of Proposal: Readers may obtain a copy of the proposal from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: October 7, 1988.

Mary L. Cunningham,

Acting Director, Information Management Division (CAI).

[FR Doc. 88-24559 Filed 10-24-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 7403, March 8, 1988) is amended to reflect the establishment of the Center for Chronic Disease Prevention and Health Promotion by merging the Center for Health Promotion and Education; the Division of Diabetes Control and the Preventive Health and Health Services Block Grant, Center for Prevention Services; and the Division of Chronic Disease Control, Center for Environmental Health and Injury Control.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. Delete in its entirety the headings, mission statement, and functional statements for the Center for Health

Promotion and Education (HCK) and substitute the following:

Center for Chronic Disease Prevention and Health Promotion (HCL)

Plans, directs, and coordinates a national program for the prevention of premature mortality, morbidity, and disability due to chronic illnesses and conditions and promotes the overall health of the population. In carrying out this mission, the Center: (1) Plans, directs, and conducts epidemiologic, behavorial, and laboratory investigations, technology translation, demonstrations, and programs directed toward the definition, prevention, and control of chronic diseases, promoting healthy behaviors and practices, and promotiong reproduction health in conjunction with State health agencies; (2) provides leadership in the development, evaluation, and dissemination of effective health promotion, school health education, and risk reduction programs; (3) plans, develops, and maintains systems of surveillance for chronic diseases and conditions, and behavioral and other risk factors; (4) conducts epidemiologic and behavioral investigations and demonstrations related to major personal health practices and behaviors, including tobacco use, nutrition, family planning, alcohol use, and exercise in conjunction with State health agencies; (5) plans, directs, and conducts epidemiologic and evaluative investigations related to issues of access, utilization, and quality of health services aimed at the prevention and control of chronic diseases and conditions and selected adverse reproductive outcomes; (6) serves as the primary focuse for assisting States and localities through grants, cooperative agreements, and other mechanisms, in establishing and maintaining chronic disease prevention and control and health promotion programs; (7) provides training and technical consultation and assistance to States and localities in planning, establishing, maintaining, and evaluating prevention and control strategies for selected chronic disease and health promotion activities; (8) plans, coordinates, and conducts laboratory activities related to selected chronic diseases with State and local health departments, other organizations, and other CDC programs: (9) provides technical consultation and assistance to other nations in the development and implementation of programs related to chronic disease prevention and control, health promotion, school health education, and selected adverse reproductive outcomes; (10) and in carrying out the above functions, collaborates as appropriate with other Centers and offices of CDC, other PHS agencies, domestic and international public health agencies, and voluntary and professional health organizations.

2. Under the heading *Center for Environmental Health and Injury Control (HCN)*, the item (1), delete the words "and chronic disease;" and in item (8), insert the word "selected" before "chronic disease;' and in item (9), delete the words "chronic diseases and."

3. Under the heading *Center for Prevention Services (HCM)*, change item (4) to read: (4) Serves as the primary focus for assisting States and localities, through grants and other mechanisms, in establishing and maintaining prevention and control programs directed toward health problems such as vaccine-preventable diseases, acquired immunodeficiency syndrome and other sexually transmitted diseases, dental disease, and tuberculosis.

Effective Date: October 18, 1988

Otis R. Bowen,

Secretary.

[FR Doc. 88-24564 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88C-0336]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-[[1-sulfo-6-[[2-(sulfoxy)ethyl]sulfonyl]-2-naphthalenyl]azo]-2,7-naphthalenedisulfonic acid, tetrasodium salt, CAS Reg. No. 98114-32-0) to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, 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 Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1)), notice is given that a petition (CAP 7C0212) has been filed by Ciba Vision Corp., P.O. Box 105069, Atlanta, GA 30348, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-[[1-sulfo-6-[[2-(sulfoxy)ethyl]sulfonyl]-2-naphthalenyl]azo]-2,7-naphthalenedisulfonic acid, tetrasodium salt, CAS Reg. No. 98114-32-0) to color contact lenses.

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).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24626 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No 88F-0328]

Arakawa Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arakawa Chemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, 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 Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4072) has been filed by Arakawa Chemical Industries, Ltd., 1-21 Hiranomachi, Higashi-Ku, Osaka 541, Japan, proposing that § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food.

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).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24621 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0325]

DuPont Canada, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DuPont Canada, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of triisopropanolamine as an optional adjuvant substance in the production of olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, 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 Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4104) has been filed by DuPont Canada, Inc., c/o Keller and Heckman, 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1520 Olefin polymers (21 CFR 117.1520) be amended to provide for the safe use of triisopropanolamine as an optional adjuvant substance in the production of olefin polymers intended for use in contact with food.

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).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24622 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0029]

ICI Americas, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a furture filing, of a petition (FAP 7B3306) proposing that the food additive regulations be amended to provide for the safe use of toluene diisocyanate as a condensate modifier in the preparation of a modified cross-linked polyester resin for use in the fabrication of articles intended for repeated use in contact with foods.

FOR FURTHER INFORMATION CONTACT: Julius Smith, 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 the **Federal Register** of March 18, 1983 (48 FR 11514), FDA published a notice that it had filed a petition (FAP 7B3306) from ICI Americas, Inc., Wilmington, DE 19897, that proposed to amend the food additive regulations to provide for the safe use of toluene diisocyanate as a condensate modifier in the preparation of a modified cross-linked polyester resin for use in the fabrication of articles intended for repeated use in contact with foods. ICI Americas, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24623 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0333]

Sandoz AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sandoz AG has filed a petition proposing that the food additive regulations be amended to include the use of di-*tert*-butylphenyl phosphonite condensation product with piphenyl as an antioxidant for 4-metylpentene-1 copolymers used in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (see. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4100) has been filed by Sandoz AG, CH-442, Basel, Switzerland, proposing that § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) be amended to include the use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for 4-methylpentence-1 copolymers used in contact with food.

The potential environmental impact of this section 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).

Dated October 14, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24624 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0316]

Troy Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Troy Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-iodo-2-propynyl butyl carbamate as an antifungal preservative in adhesives for food contact applications.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, 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 Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4088) has been filed by the Troy Chemical Corp., One Avenue L, Newark, NJ 07105-3895, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 3-iodo-2-propynyl butyl carbamate as an

antifungal preservative in adhesives for food contact applications.

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).

Dated: October 7, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24620 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0292]

Behring Diagnostics, Inc.; Premarket Approval of the Enzygost® Anti-HBc Device

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Behring Diagnostics, Inc., Somerville, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Enzygost® anti-HBc device. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Biologics Evaluation and Research (CBER) notified the applicant, by letter of May 18, 1988, of the approval of the application.

DATE: Petitions for administrative review by November 25, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William Tyler, Center for Biologics Evaluation and Research (HFB-230), Food and Drug Administration, 88 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION: On October 26, 1986, Behring Diagnostics, Inc., Somerville, NJ 08876, submitted to CBER an application for premarket approval of the Enzygost® anti-HBc device. This in-vitro diagnostic device is indicated for detection of total antibody to hepatitis B core antigen (anti-HBc) in human serum or plasma and is to be used as an aid in the diagnosis of ongoing or previous hepatitis B infection.

On Febrauary 8, 1988, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. Subsequently, the regulatory responsibility for evaluation and approval of this device was transferred to CBER because the primary intended use of the device is for screening blood. On May 18, 1988, CBER approved the application by a letter to the applicant from the Director of the Center for Biologics Evaluation and Research.

A summary of the safety and effectiveness data on which CBER based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CBER—contact William Tyler (HFB-230), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CBER's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.**

If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 25, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: October 17, 1988.

John M. Taylor,

Associate Commissoner for Regulatory Affairs.

[FR Doc. 88-24627 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0323]

Innovative Optics, Inc.; Premarket Approval of I.O.-18 (Kolfocon A) and I.O.-32 (Kolfocon B) Rigid Gas Permeable Contract Lenses (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Innovative Optics, Inc., Big Spring, TX, for premarket approval, under the Medical Device Amendments of 1976, of the I.O.-18 (kolfocon A) and I.O.-32 (kolfocon B) Rigid Gas Permeable Contact Lenses. The devices are to be manufactured under an agreement with Optacryl, Inc., Englewood, CO, which has authorized Innovative Optics, Inc., to incorporate information contained in its approved application for premarket approval for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens (Clear and Tinted). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 31, 1988, of the approval of the application.

DATE: Petitions for adminitrative review by November 25, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757

Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On March 28, 1988, Innovative Optics, Inc., Big Spring, TX 79720, submitted to CDRH an application for premarket approval of the I.O.–18 (kolfocon A) and I.O.–32 (kolfocon B) Rigid Gas Permeable Contact Lenses. The I.O.–18 lens is available as a clear lens or a lens tinted blue, green, gray, or violet. The I.O. –32 lens is available as a clear lens or a lens tinted blue or green. The lenses are indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and may correct corneal astigmatism of up to 4.00 diopters (D). The lenses are to be disinfected using a chemical (not heat) disinfection system. The tinted I.O. –18 lens contains the color additives [phthalocyaninato(2-)] copper (21 CFR 74.3045) or D&C Green No. 6 (21 CFR 74–3206) for the blue lens; phthalocynanine green (21 CFR 73.3124) for the green lens; D&C Violet No. 2 (21 CFR 74.3602) for the violet lens; and D&C Violet No. 2 (21 CFR 74–3602) D&C Green No. 6 (21 CFR 74.3206), and 4-[(2, 4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-one (21 CFR 73.3122) for the gray lens, in accordance with the color additive provisions as cited. The tinted I.O.–32 lens contains the color additives [phthalocyaninato(2-)] coppoer (21 CFR 74.3045) or D&C Green No. 6 (21 CFR 74.3206) for the blue lens and phthalocyanine green (21 CFR 73.3124) for the green lens, in accordance with the color additive provisions as cited. The application includes authorization from Optacryl, Inc., Englewood, CO 80110, to incorporate the information contained in its approved application for premarket approval and related supplements for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens (Clear and Tinted) (Docket No. 83M–0382).

On March 18, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommeded approval of the application from Optacryl, Inc. On August 31, 1988, CDRH approved the application from Innovative Optics, Inc., by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the approved contact lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Costmetic Act (the act) (21 U.S.C. *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the FEDERAL REGISTER of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall indentify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before (November 30, 1988), file with the Dockets Management Branch (address above) two copies of the petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devises and Radiological Health (21 CFR 5.53).

Dated: October 14, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–24625 Filed 10–24–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1883]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submittted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 19, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Nehemiah Housing Opportunity Program (FR-2478)

Office: Housing

Description of the Need for the Information and Its Proposed Use: Under the Nehemiah Housing Opportunity Grants Program, HUD will select nonprofit corporations through a competitive process to administer loans to the applicable families. The families will use the loans to purchase homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program.

Form Number: None

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	150		1		8		1,200
Recordkeeping	40		1		100		4,000

Total Estimated Burden Hours: 5,250

Status: New

Contact: Stephen A. Martin, HUD, (202) 755-6720; John Allison, OMB, (202) 395-6880

Date: October 17, 1988.

[FR Doc. 88-24678 Filed 10-24-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-09-4212-13]

Realty Action; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1716):

Santa Fe County

T. 18 N., R. 9 E., NMPM
Section 26: Lot 5.
T. 15 N., R. 8 E., NMPM
Section 9: NW¼NW¼.

The area described amounts to 49.77 acres.

The public land identified for disposal is located about five (5) miles north and ten (10) miles southwest of the City of Santa Fe. NM and has high value for residential development. Due to small size lack of access, the public land receives little public use.

The purposes of the exchanges are to acquire private lands offering high value for wildlife habitat and to assist the New Mexico National Guard in acquiring a parcel of land for their use. Disposal of the public land is consistant with BLM's approved resource management plan and will not affect any local or Federal planning.

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1880. (26 Stat. 391; U.S.C. 945).

3. All valid existing rights and reservations of record.

Publication of this notice segregates the public lands from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

For detailed information concerning the notice, contact Taos Resource Area Office, Plaze Montevideo Building, Cruz Alta Road, Taos, New Mexico, phone (505) 758-8851.

On or before December 9, 1988, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico.

Richard Fagan,

District Manager.

October 14, 1988.

[FR Doc. 88-24560 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-FB-M

[UT-050-09-4212-14; U-51901]

Realty Action; Noncompetitive Sale of Public Lands in Sevier County, UT

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of Realty Action; Noncompetitive sale of public lands in Sevier County, Utah.

SUMMARY: The following public lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value of $32,000.00. The lands will not be offered for sale until 60 days after date of publication of this notice.

Salt Lake Meridian, Utah

T. 22 S., R. 3 E.,
Sec. 33, NW¼NE¼;
Sec. 35, SW¼.
T. 23 S., R. 3 E.,
Sec. 3, SE¼NE¼, E½SE¼;
Sec. 10, E½NE¼, W½SE¼;
Sec. 11, NW¼.

Containing approximately 640 acres.

The public land described above is being offered by direct sale to Johnson Livestock Company. The public land has no legal or public access, is isolated, and is surounded by land owned by Johnson Livestock Company. The public land is difficult and uneconomic to manage as part of the public lands system and is not suitable for management by another Federal department or agency.

Publication of this notice in the **Federal Register** segregates the above described public lands from all forms of appropriation under the public land laws and the mining laws. This segregation will end upon issuance of a patent to the lands, upon publication in the **Federal Register** of a notice terminating the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Beginning March 1, 1989, any land not sold by direct sale will be reoffered for sale to the general public by competitive bidding. Bids will be accepted on a continuing basis until the land is sold or the sale is cancelled. The sale will be held on the first and third Wednesday of each month. Competitive sale will be by sealed bid only. No bid will be accepted for less than the appraised fair market value. Sealed bids for the unsold land will be accepted from 7:45 a.m. until 4:30 p.m. at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701, with bid openings at 2 p.m. on the sale days.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Richfield District, at the address identified above. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Terms and Conditions Applicable to the Sale: Any patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way and other valid existing rights. These include, but are not limited to, the following:

1. All minerals, including oil and gas, shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way will be reserved to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. Rights-of-way Serial Numbers SL-069862 and U-20182 for Federal Aid Highways, will be reserved to the United States.

4. The patent will be subject to the following valid existing rights of record:

a. Federal oil and gas leases U-58393 and U-52229.

b. Power transmission line right-of-way U-22141 and U-36469.

SUPPLEMENTARY INFORMATION: Detailed information concerning these valid existing rights and reservations, as well as specific procedures of the sale and planning and environmental documents are available for review at the Richfield District Office.

Date: October 17, 1988.

Jerry Goodman,

District Manager.

[FR Doc. 88-24558 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-940-09-4520-13; (ES-039337, Group 48)]

Filing of Plat of Survey of Tract No. 37 in Section 24; Alabama

October 18, 1988.

1. The plat of the survey of Tract No. 37 in Section 24, Township 18 North, Range 18 East, St. Stephens Meridian, Alabama, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on December 1, 1988.

2. The survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy States Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., December 1, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey, and Support Services.

[FR Doc. 88-24657 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-GJ-M

[CA-940-08-4520-12; Group 799]

Plat of Survey

October 11, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Inyo County

T. 22 N., R. 44 E.

2. This plat representing the corrective resurvey of a portion of the subdivisional lines, and the corrective resurvey of a portion of the subdivision of sections 3 and 4, Township 22 South, Range 44 East, Mount Diablo Meridian, California, under Group No. 799 California, was accepted September 1, 1988. 3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-24675 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-40-M

[(CO-930-09-4214-10; COC-48967)]

Notice of Proposed Withdrawal; Opportunity for Public Meeting; Colorado

October 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Aspen, Colorado, for 50 years to protect recreational facilities and resource values at the Buttermilk Ski Area. This notice closes the land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing and to Forest Service management.

DATE: Comments on this proposed withdrawal must be received on or before January 23, 1989.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1768.

SUPPLEMENTARY INFORMATION: On October 5, 1988, the Department of Agriculture, Forest Service, filed

application to withdraw the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 85 W.,
Sec. 9, lot 6;
Sec. 10, lots 13, 14, 15, 17, 18, 22, SE¼;
Sec. 15, lots 1, 2, 3, 4, N½NE¼, N½SW¼SW¼NE¼; N½SW¼NE¼, N½NW¼SE¼NE¼, N½N½NW¼SW¼;
Sec. 16, lots 1, 2, 3, 4, E½NW¼NE¼, NE¼NW¼SE¼, SW¼NE¼.

The area described aggregates approximately 887.61 acres of National Forest System land in Pitkin County, Colorado.

The purpose of this withdrawal is to protect recreational facilities and high resource values within the Buttermilk Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connectioin with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, Section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those discretionary uses that do not conflict with the ski area permit and use.

Gary A. McVicker,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 88-24563 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 15, 1988. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 9, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Juneau Borough-Census Area

Mayflower School, St. Ann's and Savikko Sts., Douglas, 88002534

HAWAII

Maui County

Wananalua Congregational Church, Hana Hwy. and Haouli St., Hana, 88002533

IOWA

Calhoun County

Marsh Rainbow Arch Bridge, Hwy. M37, Lake City vicinity, 88002529

KENTUCKY

Boyd County

US Post Office—Ashland, 1645 Winchester Ave., Ashland, 88002617

Jefferson County

Bowman Field Historic District, Taylorsville Rd. and Peewee Reese Blvd., Louisville, 88002616

Larue County

Hodgenville Commercial Historic District, Public Sq. and N. Lincoln Blvd., Hodgenville, 88002540

Lincoln Boyhood Home, US 31E, 1 mi. S of Athertonville, Athertonville vicinity, 88002531

McCreary County

Stearns Administrative and Commercial District, Old US 27, Stearns, 88002528

Ohio County

Old Town Historic District, Roughly bounded by E. Union, Clay, E. Washington and Liberty Sts., Hartford, 88002535

Oldham County

Russell Court, Roughly bounded by Madison St., Chestnut St., E. Jefferson St., and Maple St., La Grange, 88002612

Todd County

Allensville Historic District, KY 102/Main St., Allensville, 88002611

Trigg County

Cadiz Downtown Historic District, Roughly Main St. from Scott to Franklin Sts., Cadiz, 88002606

NORTH CAROLINA

Robeson County

Humphrey—Williams Plantation, NC 211 between SR 1001 and SR 1769, Lumberton vicinity, 88002608

OHIO

Hamilton County

Lower Price Hill Historic District, Roughly bounded by W. 8th, State, Burns, and English St., Cincinnati, 88002536

TENNESSEE

Davidson County

Westboro Apartments, 3101 West End Ave., Nashville, 88002607

Fayette County

Bass—Morrell House, TN 293/Bryson Rd., Ardmore, 88002615

Hawkins County

Price Public Elementary School, Hasson and Spring Sts., Rogersville, 88002538

Shelby County

Hein Park Historic District, Bounded by Charles Pl., Jackson Ave., Trezevant St., and N. Parkway Dr., Memphis, 88002613

Warren County

Philadelphia Church of Christ, Vervilla Rd., Vervilla, 88002537

TEXAS

Anderson County

Broyles, William and Caroline, House, 1305 S. Sycamore St., Palestine, 88002614

Cameron County

Brook, Samuel Wallace, House, 623 E. St. Charles St., Brownsville, 88002530

Dimmit County

Richardson, Asher and Mary Isabelle, House, US 83, Asherton, 88002539

Llano County

Llano County Courthouse Historic Distric, Roughly bounded by the Llano River, Ford St., Sandstone St., and Berry St., Llano, 88002542

Tom Green County

Angelo Heights Historic District (San Angelo MRA), Roughly bounded by Colorado St., the Concho River, Live Oak St., S. Bishop St., Twohig St., and S. Wahsington St., San Angelo, 88002605

Aztec Cleaners and Laundry Building (San Angelo MRA), 119 S. Irving, San Angelo, 88002577

Beck, Frederick, Farm (San Angelo MRA), 1231 Culberson, San Angelo, 88002566

Blakeney, J.B., House (San Angelo MRA), 438 W. Twohig, San Angelo, 88002600

Broome, C.A., House (San Angelo MRA), 123 S. David, San Angelo, 88002567

Brown, R. Wilbur, House (San Angelo MRA), 1004 Pecos, San Angelo, 88002585
Building at 113–119 E. Concho, (San Angelo MRA), 113–119 E. Concho, San Angelo, 88002564
Clayton House (San Angelo MRA), 1101 S. David, San Angelo, 88002570
Collyns House (San Angelo MRA), 315 W. Twohig, San Angelo, 88002597
Develin House (San Angelo MRA), 913 S. David, San Angelo, 88002568
Eckert Houe (San Angelo MRA), 503 Koberlin, San Angelo, 88002578
Emmanuel Episcopal Church (San Angelo MRA), 3 S. Randolph, San Angelo, 88002590
First Presbyterian Church (San Angelo MRA), 32 W. Irvin, San Angelo, 88002604
Fisher, O.C., Federal Building (San Angelo MRA), 33 E. Twohig, San Angelo, 88002592
Greater St. Paul AME Church (San Angelo MRA), 215 W. 3rd St., San Angelo, 88002548
Hagelstein Commercial Buidling (San Angelo MRA), 616–620 S. Chadbourne, San Angelo, 88002560
Hall, R.A., House (San Angelo MRA), 215 W. Twohig, San Angelo, 88002595
Henderson, S.L., House (San Angelo MRA), 1303 S. Park, San Angelo, 88002583
Holcomb-Blanton Print Shop (San Angelo MRA), 24 W. Beauregard, San Angelo, 88002254
House at 1017 S. David (San Angelo MRA), 1017 S. David, San Angelo, 88002569
House at 123 Allen (San Angelo MRA), 123 Allen, San Angelo, 88002601
House at 1325 S. David (San Angelo MRA), 1325 S. David, San Angelo, 88002571
House at 140 Allen (San Angelo MRA), 140 Allen, San Angelo, 88002550
House at 1621 N. Chadbourne (San Angelo MRA), 1621 N. Chadbourne, San Angelo, 88002559
House at 203 S. David (San Angelo MRA), 203 S. David, San Angelo, 88002603
House at 221 N. Magdalen (San Angelo MRA), 221 San Angelo, 88002579
House at 405 Preusser (San Angelo MRA), 405 Preusser, San Angelo, 88002586
House at 410 Summit (San Angelo MRA), 410 Summit, San Angelo, 88002591
House at 419 West Avenue C (San Angelo MRA), 419 West Ave. C, San Angelo, 88002544
House at 421 W. Twohig (San Angelo MRA), 421 W. Twohig, San Angelo, 88002598
House at 427 W. Towhig (San Angelo MRA), 427 W. Twohig, San Angelo, 88002599
House at 521 W. Highland Blvd. (San Angelo MRA), 521 W. Highland Blvd., San Angelo, 88002575
House at 715 Austin (San Angelo MRA), 715 Austin, San Angelo, 88002551
House at 731 Preusser (San Angelo MRA), 731 Preusser, San Angelo, 88002589
Household Furniture Co. (San Angelo MRA), 11 N. Chadbourne, San Angelo, 88002558
Iglesia Santa Maria (San Angelo MRA), 7 West Ave. N, San Angelo, 88002547
Lone Wolf Crossing Bridge (San Angelo MRA), Ave. K extension, E of Oakes, San Angelo, 88002546
Mason—Hughes House (San Angelo MRA), 1104 W. Beauregard, San Angelo, 88002557
Masonic Lodge 570 (San Angelo MRA), 130 S. Oakes, San Angelo, 88002580
McClelland, J.T. and Minnie, House (San Angelo MRA), 715 W. Highland, San Angelo, 88002576
Monogram Square (San Angelo MRA), 705 W. Concho, San Angelo, 88002602
Montgomery Ward Building (San Angelo MRA), 10 W. Beauregard, San Angelo, 88002553
Municipal Swimming Pool (San Angelo MRA), 18 East Ave. A, San Angelo, 880025434
Murrah House (San Angelo MRA), 212 W. Twohig, San Angelo, 88002594
Oakes Hotel Building (San Angelo MRA), 204 S. Oakes, San Angelo, 88002581
Princess Ice Cream Co. (San Angelo MRA), 217 W. Beauregard, San Angelo, 88002556
San Angelo City Hall (San Angelo MRA), City Hall Plaza, San Angelo, 88002563
San Angelo Telephone Company Building (San Angelo MRA), 14 W. Twohig, San Angelo, 88002593
Schneemann, William, House (San Angelo MRA), 724 Preusser St., San Angelo, 88002588
Shepperson House (San Angelo MRA), 716 Preusser, San Angelo, 88002587
Texas Highway Department Building, Warehouse and Motor Vehicle Division (San Angelo MRA), 100 Paint Rock Rd., San Angelo, 88002582
Tom Green County Courthouse (San Angelo MRA), 100 W. Beauregard, San Angelo, 88002555
Walsh, C.C., House (San Angelo MRA), 922 Pecos, San Angelo, 88002584
Wardlaw, Dr. Herbert A., House (San Angelo MRA), 233 W. Twohig, San Angelo, 88002596
West Texas Utilities Office (San Angelo MRA), 15 E. Beauregard, San Angelo, 88002552
Westbrook, John C., House (San Angelo MRA), 600 West Ave. C, San Angelo, 88002545
Willeke, John and Anton, House (San Angelo MRA), 941 E. Harris, San Angelo, 88002573
Willeke, John, Jr., House (San Angelo MRA), 1005 E. Harris, San Angelo, 88002574
Willeke, John, Sr., House (San Angelo MRA), 931 E. Harris, San Angelo, 88002572
Woodward Dr. M. M., House (San Angelo MRA) 44 W. 25th St., San Angelo 88002549

WASHINGTON

Lincoln County

Fort Spokane Military Reserve, Rt. 25, Miles vicinity, 88002621

WYOMING

Albany County

First National Bank of Rock River, 131 Ave. C, Rock River, 88002532
Laramie Downtown Historic District, Roughly bounded by University Ave., 6th St., Grand Ave., 3rd St., Garfield Ave., and 1st Ave., Laramie, 88002541

Natrona County

South Wolcott Street Historic District, Roughly bounded by S. Center St., E. Ninth St., S. Wolcott St., E. Seventh St., S Beech St., and E. Thirteenth St., Casper, 88002609

The following property is being considered for approval of a proposed move:

UTAH

Summit County

Sullivan James R. and Mary E., House, Mining Boom Era Houses, 146 Main, Park City 84002360

The following properties are also being considered for listing in the National Register but were excluded from the list dated October 1, 1988:

VERMONT

Bennington County

Yester House, West Rd., Manchester 88002051

VIRGINIA

Cumberland County

Needham, VA 45, 1.4 mi. N of jct. with US 460, Farmville 88002059

[FR Doc. 88–24652 Filed 10–24–88; 8:45 am]

BILLING CODE 4310–70–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 Ninetieth Meeting of the Board for International Food and Agricultural Development (BIFAD) on November 18, 1988.

The purposes of the Meeting are: (A) To Swear-in Paul Findley, (B) to hear presentations and reports on (1) Training Task Force, (2) Evaluation of Title XII, (3) JCARD plan for implementing Environmental and Natural Resources Task Force Recommendations and (C) to have the Board take action on (1) ICOP Proposal- U.S. Bilateral Assistance; 1990's and Beyond and (2) BIFAD Proposal- Title XII for the 90ies.

The November 18, 1988 Meeting will be held in the Department of State, Room 1048, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested taht those

desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA–18, Washington, DC 20523, or telephone him on (703) 235–8929.

Dated: October 18, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88–24674 Filed 10–24–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31342]

Soo Line Railroad Co. et al.; Exemptions for Joint Project for Relocation of a Line of Railroad and Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Revocation of Class Exemptions.

SUMMARY: In this proceeding, the Soo Line Railroad Company's (Soo) class exemptions under 49 CFR 1180.2(d) (5) and (7) are revoked pending compliance by Soo with the requirements of the Coastal Zone Management Act. Revoking the exemptions will preserve the status quo pending resolution of these environmental concerns.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 or, Carl Bausch, (202) 275–0800. (TDD for hearing impaired service (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1271.]

Decided: October 20, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24726 Filed 10–24–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 299X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Skagit County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Burlington Northern Railroad Company of 11.27 miles of rail line in Skagit County, WA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 24, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 4, 1988, petitions to stay must be filed by November 9, 1988, and petitions for reconsideration must be filed by November 21, 1988. Requests for a public use condition must be filed by November 4, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub–No. 299X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing-impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services, (202) 275–1721.]

Decided: October 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24557 Filed 10–24–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Line Aband. or Discon.—Offers of Fin. Assist.*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48446–48446).

DEPARTMENT OF JUSTICE

Lodging of Operable Unit Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 17, 1988 a proposed Operable Unit Consent Decree in *United States of America v. Ford Motor Company* and *State of Michigan v. Ford Motor Company*, Civil Action No. 88–40378 was lodged with the United States District Court for the Eastern District of Michigan. The proposed Operable Unit Consent Decree concerns the performance by Ford of a source control remedial action at an area designated an operable unit at the Speigelberg Landfill in Green Oak Township, Livingston County, Michigan. The proposed Operable Unit Consent Decree requires the defendant to conduct the source control remedial action at this portion of the larger site, to reimburse the United States Environmental Protection Agency and the State of Michigan for oversight costs incurred during the implementation of this remedial action and for past costs not inconsistent with the National Contingency Plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Ford Motor Company* D.J. Ref. 90–11–2–285.

The proposed Operable Unit Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, 113 Federal Building, 600 Church Street, Flint, Michigan 48502, and at the Region V Office of the Environmental Protection Agency, 230 Dearborn Street, Chicago, IL 60604. Copies of the Operable Unit Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Operable Unit Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of

Justice. In requesting a copy, please enclose a check in the amount of $18.20, (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 24562 Filed 10–24–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Construction Crane Rating Chart Limitation Instructions
Recordkeeping; On occasion
Business and other for-profit; Small business or organizations
19 respondents; 4550 total burden hours; 239 hours per response
Construction Crane rating Charts, assigned machine use limitations, and attachment capacity ratings are necessary for crane use by employers using a crane, regardless of user entity.
These documentations are used to prevent overloading, misuse and procedures that will cause employee injuries.

Occupational Safety and Health Administration
Construction Oxygen and Toxic Gas Test
Recordkeeping
Businesses or other for-profit: Small businesses or organizations
196 respondents; 703 burden hours; 3.6 average burden hours per response; 0 forms
The required information is needed when internal combustion engines exhaust into an enclosed space to assure that oxygen and toxic gas levels are properly controlled to eliminate employee exposure to a hazardous environment.

Extension

Employment Standards Administration
Notice of Final Payment or Suspension of Compensation Payments
1215–0024; LS–208
On occasion
Businesses or other for-profit
500 respondents; 8,500 total hours; .25 hrs. per response; 1 form
Report is used by insurance carriers and self-insured employers to report the payment of benefits under the Act.

Mine Safety and Health Administration
Record of All Certified and Qualified Persons
Quarterly
Businesses and other for profit; small businesses or organizations
5,585 responses; 5 minutes per response; 1,854 hours
Requires coal mine operators to maintain a list of all certified and qualified persons designated to perform duties under 30 CFR Parts 75 and 77.

Signed at Washington, DC, this 20th day of October, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–24672 Filed 10–24–88; 8:45 am]

BILLING CODE 4510–26–M

Mine Safety and Health Administration

[Docket No. M–88–192–C]

West End Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

West End Coal Company, R.D. No. 1, Box 315–A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety

connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 25, 1988. Copies of the petition are available for inspection at that address.

Dated: October 18, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-24673 Filed 10-24-88; 8:45 am]

BILLING CODE 4510-43-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting; Monitored Retrievable Storage

ACTION: Notice of meeting.

SUMMARY: The Monitored Retrievable Storage Review Commission, pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, will hold public hearings to obtain the views of the public on the need for a Monitored Retrievable Storage (MRS) facility as part of the nation's nuclear waste management system. This notice announces the dates and locations of the hearings, provides procedures for participating in the hearings, and lists some of the issues that participants may want to address in their remarks.

DATES: The dates, locations, and times of the hearings are:

—December 1, 1988 in Washington, DC at the Rayburn House Office Building, Room 2322, Independence Avenue between South Capitol Street and First Street SW., Washington, DC from 10:30 a.m. to 5:00 p.m.

—December 2, 1988 in Washington, DC at the Rayburn House Office Building, Room 2322, Independence Avenue between South Capitol Street and First Street SW., Washington, DC from 9:00 a.m. to 5:00 p.m.

—January 5, 1989 in Denver, Colorado at the Stouffer Concourse Hotel, 3801 Quebec Street, Denver, CO 80207, (303-399-7500) from 9:00 a.m. to 5:00 p.m.

—January 9, 1989 in San Francisco, California at the Cathedral Hill Hotel, 1101 Van Ness Avenue, San Francisco, CA 94109, (415-776-8200) from 9:00 a.m. to 5:00 p.m.

—January 17, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Requests to testify must be received:

—No later than November 17, 1988 for the December 1-2, 1988 hearing in Washington, DC;

—No later than December 15, 1988 for the January 5, 1989 hearing in Denver, Colorado;

—No later than December 22, 1988 for the January 9, 1989 hearing in San Francisco, California; and

—No later than January 5, 1989 for the January 17, 1989 hearing in Atlanta, Georgia.

Interested persons may submit written comments in lieu of testifying until February 17, 1989. An original and five copies should be submitted to Commissioners, Monitored Retrievable Storage Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. (202) 653-5361.

SUPPLEMENTARY INFORMATION: The Monitored Retrievable Storage Review Commission was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) and charged with the responsibility "to evaluate the need for a monitored retrievable storage facility as a part of the nation's nuclear waste management system." The Commission was directed to prepare a report to Congress by June 1, 1989. That date was subsequently extended to November 1, 1989. (Pub. L. 100-507).

In carrying out its mission, the Commission decided to study the work which has been done to date in this field and to hear from all interested persons who wish to make their views known to the Commission. To achieve this goal, the Commission held a series of public briefings in July, 1988 in which certain agencies and organizations involved with the issue of monitored retrievable storage participated. Subsequently, in August and September the Commission held additional briefings with the Department of Energy and the Nuclear Regulatory Commission, which were announced in the **Federal Register.**

The purpose of the hearings announced in this notice is to solicit the views of any interested persons on whether the Commission should recommend that a monitored retrievable storage facility for spent nuclear fuel be included as part of an integrated nuclear waste management program. It should be noted, however, that the Commission was not asked by the U.S. Congress and does not intend to address siting of an MRS. That will be the Department of Energy's (DOE) responsibility if the Congress decides to permit DOE to proceed with the MRS after receiving the Commission's recommendations.

The Commission encourages any interested person to make his or her views known during the public hearings either through attendance at a meeting or in writing. The Commissioners will consider the information received when it develops its recommendations and reports to Congress.

Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. The written request should specify the following: name, title, organization and telephone number of the person who will be testifying; name, title, organization, and telephone number of the person to contact regarding the testimony if different from the presenter; length of time desired to present testimony; and city where testimony will be given. Requests to testify must be received:

—No later than November 17, 1988 for the December 1-2, 1988 hearing in Washington, D.C;

—No later than December 15, 1988 for the January 5, 1989 hearing in Denver, Colorado;

—No later than December 22, 1988 for the January 9, 1989 hearing in San Francisco, California; and

—No later than January 5, 1989 for the January 17, 1989 hearing in Atlanta, Georgia.

To accommodate all persons requesting to testify and to allow time for questions from the Commissioners, a time limit will be placed on scheduled oral presentations. The amount of time permitted for each oral presentation will depend on the number of requests that

the Commission receives. Those testifying will be notified of time constraints following receipts of their written requests. Persons testifying are asked to provide five copies of their testimony and any accompanying slides or other documentation five days in advance of their presentation to the MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Persons testifying are also asked to bring 75 copies at the time of their testimony.

In addition to oral presentations scheduled in advance, the Commission will provide time at each of the hearings to hear the views of interested persons on a first come, first served basis. Participants in this part of the hearing do not need to notify the Commission in advance of their plan to attend, but they will be required to appear between 9:00 am and 12:00 noon at the hearing location on the date of the hearing and sign up for a five minute time slot during the time allotted.

Participants during both parts of the hearing should be prepared to answer questions from the Commission. A transcript of the hearings will be made.

Issues

In the legislation creating the Monitored Retrievable Storage Review Commission, Congress directed the Commission to address a number of issues in its evaluation and recommendation to Congress on the need for an MRS. The Commission has since identified additional issues that should be considered in its evaluation. Some of these issues are set forth below to focus the discussions during the public hearings. Interested persons may wish to address them in their written statements or oral remarks but need not limit their comments to them.

1. Are there specific reasons why an MRS facility should or should not be built, assuming a suitable site can be found for the facility? Consider, for example:

—Need for the facility;
—Public health and safety;
—Environmental impacts;
—Safeguards/national security;
—Transportation issues such as public health, safety and environmental effects; routing; inspection, enforcement and emergency preparedness capabilities along the routes; and the possible need for new transportation facilities;
—Predictability and reliability of the national system for the disposal of radioactive waste;
—Potential effect of the MRS facility on repository design and construction; waste package design, fabrication and standardization; and waste preparation;
—Ability of the Secretary of the U.S. Department of Energy to fulfill contractual commitments to accept spent fuel for disposal; and
—Economic issues such as the costs of building and operating an MRS compared to the costs of continued storage of spent fuel at reactors, the cost of an MRS facility to electric utility ratepayers and taxpayers and the equitable distribution of such costs; the economic consequences of siting a MRS facility on the area in which an MRS might be located; and the advisability and possible methods of trying to mitigate economic and fiscal consequences in siting an MRS.

2. Some of the proposed MRS facility functions include serving as a hub for spent fuel transportation, temporary spent-fuel storage for up to 15,000 metric tons of heavy metal (MTHM), manufacturing concrete casks in which spent fuel would be stored, and preparing the spent fuel for disposal (including consolidating fuel rods and placing the fuel in the appropriate disposal containers). If an MRS facility were to be built and operated, what functions should be carried at the facility?

3. One alternative to an MRS facility is continued at-reactor storage. Are there other viable alternatives that should be considered? What are the advantages and disadvantages of the alternatives?

4. The 1987 Amendments to the National Waste Policy Act (NWPA) place the following restrictions on the site selection, construction, and operation of an MRS facility:

—Construction of the MRS may not begin until the NRC has issued a license for the construction of the repository.
—Construction of the MRS or acceptance of waste (i.e., spent fuel or high level waste) at the MRS is prohibited during such time as the repository license is revoked by the NRC or construction of the repository ceases.
—The total quantity of waste at the MRS cannot exceed 10,000 MTHM until the repository first accepts waste.
—The quantity of waste at the MRS may not, in any case, exceed 15,000 MTHM.

The principal purpose of the restrictions is to assure that the MRS facility does not become a *de facto* repository. Are the restrictions necessary if an MRS is built? Are they appropriate? Are they adequate? If an MRS is built, are there other ways to achieve the objective?

5. When considering whether to include an MRS facility in the national nuclear waste program, what weight should be given to subjective factors such as program predictability and reliability, program flexibility, and public confidence that the national nuclear waste program will be successful?

Sherwood C. Chu,

Acting Executive Director.

October 20, 1988.

[FR Doc. 88-24607 Filed 10-24-88; 8:45 am]

BILLING CODE 6820-BE-M

[Docket No. 50-455]

NUCLEAR REGULATORY COMMISSION

Texas Utilities Electric Co. et al., Comanche Peak Steam Electric Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR-126 issued to Texas Utilities Electric Company (TU Electric), Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station (CPSES) Unit No. 1 (the facility) located on Applicants' site in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the construction permit by extending the latest construction completion date from August 1, 1988 to August 1, 1991. The proposed action is in response to Applicants' request dated June 6, 1988. Construction Permit No. CPPR-127 for the CPSES Unit No. 2 is not affected by this action.

The Need for the Proposed Action

The Applicants state in their request that the proposed action is needed so they can complete the intensive program of review and reinspection which was initiated in the fall of 1984 to provide evidence of the safe design and construction of the CPSES Units No. 1 and No. 2. The remedial program was undertaken by the Applicants to respond to issues raised by the NRC

Staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding. Although the operating license proceeding was dismissed on July 13, 1988,[1] the review and reinspection program must still be carried out prior to the CPSES licensing for operation. The Applicants have advised the NRC Staff that they anticipate completion of the remedial program for the CPSES Unit No. 1 before the proposed latest construction completion date, including reinspection efforts, development of essential documentation regarding the adequacy of facility design and construction, and necessary redesign, and modification of affected structures, systems, and components.

Environmental Impacts of the Proposed Action

The environmental impacts associated with construction of the Comanche Peak facility are associated with both units and have been previously evaluated and discussed in the NRC Staff's Final Environmental Statement (FES) related to the proposed CPSES Unit No. 1 and No. 2, issued in June 1974, which covered the construction of both units. One of the environmental impacts, groundwater withdrawal, is the subject of a construction permit condition and will be discussed further below.

Since the proposed action concerns the extension of the construction permit, the impacts involved are all non-radiological and are associated with continued construction. There are no new significant impacts associated with the proposed action. The reinspection and modifications required by the Applicants' remedial program are equivalent to those of a maintenance or repair program. All the remedial program activities will take place within the facility, will not result in impacts to previously undisturbed areas, and will not have any significant additional environmental impact. However, there are impacts that would continue during the completion of facility construction, including the reinspection and modification activities.

The FES identified four major environmental impacts due to the construction of both units. Three of the four major environmental construction impacts discussed in the FES have already occurred and are not affected by this proposed action:

—Construction-related activities have disturbed about 400 acres of rangeland and 3,228 acres of land have been used for the construction of Squaw Creek Reservoir.
—The initial set of transmission lines and the additional planned line as discussed in the FES are complete.
—Pipelines have been relocated and the railroad spur and diversion and return lines between Lake Granbury and Squaw Creek Reservoir have been completed.

The fouth major environmental impact addressed in the FES is the community impact which would continue with the extended construction of the facility. Continuing construction does not involve community impacts different from or significantly greater than those previously considered. However, the community will be impacted for a longer period of time than was previously considered as a result of the proposed action. Activities related to the remedial program have resulted in a temporary increase in the current combined site workforce to approximately 8000, being primarily engineering and technical personnel rather than construction workers. At the present time, this workforce is basically dedicated to completion of Unit No. 1 and its preparation for operation, with a small percentage of the workforce being devoted to Unit No. 2 activities. The increase is temporary as the Applicants expect the combined workforce to decline as the remedial program nears completion and Unit No. 1 approaches fuel loading (currently planned for June 1989). When Unit No. 1 construction is completed and Unit No. 2 construction is resumed, the workforce dedicated to Unit No. 2 activities is expected to be about 4500. However, the peak workforce for both Units No. 1 and No. 2 combined is not expected to exceed 8000. The Applicants state that about 85% of the current total workforce is contractors and consultants who do not live in the area and use only temporary quarters during the workweek. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Another environmental impact discussed in the FES is the continued withdrawal of groundwater, an impact which is the subject of a condition in the construction permit. Continued construction will not have a significant effect on groundwater withdrawal beyond that already considered, even though construction has extended over a longer period of time than the staff originally anticipated. The construction permits for the CPSES Units No. 1 and No. 2 limit groundwater usage for the site to 40 gpm on an annual average basis for the duration of construction. The groundwater usage for 1986 and 1987 has averaged less than half of this amount for the site. Most construction water is being supplied by treated water from the Squaw Creek Reservoir, thus reducing the amount of groundwater being used.

The original construction permits allowed an annual average groundwater withdrawal rate for the site not exceeding 250 gpm for a period of 5 years and then 30 gpm thereafter. In July 1982, the Applicants requested an amendment to the construction permits increasing the allowable annual average groundwater withdrawal rate from 30 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm was established in Amendments No. 6, dated August 27, 1982, to Construction Permits CPPR–126 and CPPR–127 for the CPSES Units No. 1 and No. 2, respectively. The staff evaluation of the increased site limit was predicated on the latest of the CPSES construction completion dates existing at the time, i.e., August 1, 1987 for Unit No. 2 (per Order dated April 30, 1982), or 5 years.[2] The Applicants' present request to extent the latest construction completion date of Unit No. 1 for 3 years from August 1, 1988 until August 1, 1991 necessitates evaluating the impact of continuing to withdraw groundwater for an additional 3 years at the annual average rate of 40 gpm. The staff has assessed the impact of continued groundwater withdrawal at the CPSES site at an annual average rate of 40 gpm for 5 years in light of the Applicants' April 29, 1987 request, as amended on June 6, 1988, to extend the latest construction completion date of CPPR–127 for Unit No. 2 until August 1, 1992. Consequently, that assessment is repeated herein as it encompasses the period of time for which the Applicants have requested an extension of the Unit No. 1 construction permit.

[1] Based on the ASLB's consideration of a Joint Motion for Dismissal of Proceedings by the Applicants, Intervenor (Citizens Association for Sound Energy), and the NRC Staff and a Joint Stipulation regarding conditions for dismissal, both filed on July 1, 1988, the ASLB issued a Memorandum and Order (Dismissing Proceedings) on July 13, 1988. This same order dismissed the construction permit amendment proceeding relating to the staff's 1986 granting of an extension to the CPSES Unit No. 1 construction permit following an untimely request for extension by the Applicants.

[2] At that time, the latest construction completion date for Unit No. 1 was August 1, 1985.

The Applicants are withdrawing water from the Twin Mountains aquifer which is a confined aquifer in the vicinity of the site. From a geologic crosssection supplied by the Applicants, the Staff determined that the aquifer is about 200 feet thick, with its upper confining layer about 250 feet below the surface. The aquifer still has artesian pressure at the site, but this may change at the present yearly rate of aquifer decline.

The Staff used the Theis non-equilibrium equation in its previous impact assessment of groundwater withdrawal at the site and which is appropriate for this case as well. The non-equilibrium equation should be used only with unconfined aquifers; however, it is expected to give a conservative estidmate (over estimate) of drawdown in a confined artesian aquifer. Using the non-equilibrium equation, the staff calculated a drawdown of 2.8 feet at the nearest offsite well (8000 feet from the power block) for a constant pumping rate of 40 gpm over 5 years.

The Staff reviewed water level measurement data from 4 nearby observation wells for the period 1975 to 1987 and determined that even though there was a steady overall decline in water level for all wells, this decline could only partially be attributed to onsite pumping of groundwater. From this review of water level data, the staff could also determine that seasonal fluctuations in water level could be of the order of 3 to 10 feet.

In addition, it should be noted that the original staff impact evaluation for the construction permit was based on a five-year annual average withdrawal rate of 250 gpm or 6.57×10^8 gallons, followed by an annual average rate of 30 gpm until the end of construction, although this was subsequently amended to 40 gpm as discussed earlier. As of July 1, 1987, approximately 5.29×10^8 gallons of groundwater had actually been withdrawn. Five additional years of withdrawal at the rate of 40 gpm would add 1.05×10^8 gallons to the withdrawal, resulting in a total withdrawal of 6.34×10^8 gallons. Hence, total groundwater depletion of the aquifer is still less than that assumed in the original construction permit impact evaluation for the first 5 years of construction.

Based on its evaluation, the Staff has concluded that the calculated impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1991 [3] is negligible and does not result in any significant additional environmental impact. Further, the Staff's conclusion is substantiated by groundwater level data collected at the site during construction and periods of large water withdrawal.

Based on the foregoing, the NRC Staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

The NRC Staff has considered that a possible alternative to the proposed action would be for the Commission to deny the request. If this alternative were executed, the Applicants would not be able to complete construction of the facility, resulting in the denial of the benefits to be derived from the production of electric power. This alternative would not eliminate the environmental impacts of construction which have already been incurred. If construction were not completed on Unit No. 1, the amount of site redress activities that could be undertaken to restore the area to its natural state would be minimal since both Unit No. 1 and Unit No. 2 are essentially complete. This slight environmental benefit would be much outweighed by the economic losses from denial of the use of a facility that is nearly complete. Therefore, the NRC Staff has rejected this alternative.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES.

Agencies and Persons Contacted

The NRC Staff reviewed the Applicants' request and applicable documents referenced therein that support this extension, as well as supplemental information provided. The NRC did not consult with other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based on the environmental assessment, the Commission concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the Applicants' request for extension dated June 6, 1988, as well as the Applicants' request dated April 29, 1987 related to unit No. 2 (supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988), available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88-24610 Filed 10-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446]

Texas Utilities Electric Co. et at., Commanche Peak Steam Electric Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR-127 issued to Texas Utilities Electric Company (TU Electric), Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station (CPSES) Unit No. 2 (the facility) located on Applicants' site in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the construction permit by extending the latest construction completion date from August 1, 1987 to August 1, 1992. The proposed action is in response to Applicants' request dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988. Construction Permit No. CPPR-126 for the CPSES Unit No. 1 is not affected by this action.

The Need for the Proposed Action

Although construction of Unit No. 2 is not yet fully completed and was temporarily suspended for about one

[3] In light of the Applicants' April 29, 1987 request, as amended on June 6, 1988 to extend the latest construction completions for CPPR-127, the Staff has previously determined that the impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1992 is negligible and does not result in any significant additional environmental impact.

year beginning in April 1988, the Applicants must maintain the construction permit in effect since they have not announced termination of the plant. The Applicants state in their request that the proposed action is needed so they can complete the intensive program of review and reinspection which was initiated in the fall of 1984 to provide evidence of the safe design and construction of the CPSES Units No. 1 and No. 2. The temporary direction of resources since mid-1985 to activities under that remedial program to Unit No. 1 rather than to Unit No. 2 has caused delays which have contributed to the need for the extension of the latest construction completion date for Unit No. 2. The remedial program was undertaken by the Applicants to respond to issues raised by the NRC Staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding. Although the operating license proceeding was dismissed on July 13, 1988,[1] the review and reinspection program must still be carried out prior to the CPSES licensing for operation. The Applicants have advised the NRC Staff that they anticipate completion of the remedial program for the CPSES Unit No. 2 before the proposed latest construction completion date, including reinspection efforts, development of essential documentation regarding the adequacy of facility design and construction, and necessary redesign, and modification of affected structures, systems, and components.

Environmental Impacts of the Proposed Action:

The environmental impacts associated with construction of the Comanche Peak facility are associated with both units and have been previously evaluated and discussed in the NRC Staff's Final Environmental Statement (FES) related to the proposed CPSES Units No. 1 and No. 2, issued in June 1974, which covered the constructon of both units. One of the environmental impacts, groundwater withdrawal, is the subject of a construction permit condition and will be discussed further below.

[1] Based on the ASLB's consideration of a Joint Motion for Dismissal of Proceedings by the Applicants, Intervenor (Citizens Association for Sound Energy), and the NRC Staff and a Joint Stipulation regarding conditions for dismissal, both filed on July 1, 1988, the ASLB issued a Memorandum and Order (Dismissing Proceedings) on July 13, 1988. This same order dismissed the construction permit amendment proceeding relating to the staff's 1986 granting of an extension to the CPSES Unit No. 1 construction permit following an untimely request for extension by the Applicants.

Since the proposed action concerns the extension of the construction permit, the impacts involved are all non-radiological and are associated with continued construction. There are no new significant impacts associated with the proposed action. The reinspection and modifications required by the Applicant's remedial program are equivalent to those of a maintenance or repair program. All the remedial program activities will take place within the facility, will not result in impacts to previously undisturbed areas, and will not have any significant additional environmental impact. However, there are impacts that would continue during the completion of facility construction, including the reinspection and modification activities.

The FES identified four major environmental impacts due to the construction of both units. Three of the four major environmental construction impacts discussed in the FES have already occurred and are not affected by this proposed action:

—Construction-related activities have disturbed about 400 acres of rangeland and 3,228 acres of land have been used for the construction of Squaw Creek Reservoir.
—The initial set of transmission lines and the additional planned line as discussed in the FES are complete.
—Pipelines have been relocated and the railroad spur and diversion and return lines between Lake Granbury and Squaw Creek Reservoir have been completed.

The fourth major environmental impact addressed in the FES is the community impact which would continue with the extended construction of the facility. Continuing construction does not involve community impacts different from or significantly greater than those previously considered. However, the community will be impacted for a longer period of time than was previously considered as a result of the proposed action. During early 1986, the combined peak construction workforce for the site was about 5300. Since then, activities related to the remedial program have resulted in the current combined workforce of approximately 8000, an increase of 2700 workers, being primarily engineering and technical personnel rather than construction workers. At the present time, this workforce is basically dedicated to completion of Unit No. 1 and its preparation for operation, with a small percentage of the workforce being devoted to Unit No. 2 activities. The increase is temporary as the Applicants expect the combined workforce to decline as the remedial program nears completion and Unit No. 1 approaches fuel loading (currently planned for June 1989). When Unit No. 1 construction is completed and Unit No. 2 construction is resumed, the workforce dedicated to Unit No. 2 activities may reach 4500, but the peak workforce for both Units No. 1 and No. 2 combined is not expected to exceed 8000. The Applicants state that about 85% of the current workforce is contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Another environmental impact discussed in the FES is the continued withdrawal of groundwater, an impact which is the subject of a condition in the construction permit. Continued construction will not have a significant effect on groundwater withdrawal beyond that already considered, even though construction has extended over a longer period of time than the staff originally anticipated. The construction permits for the CPSES Units No. 1 and No. 2 limit groundwater usage for the site to 40 gpm on an annual average basis for the duration of construction. The groundwater usage for 1985, 1986, and 1987 has averaged less than half of this amount for the site. Most construction water is being supplied by treated water from the Squaw Creek Reservoir, thus reducing the amount of groundwater being used.

The original construction permits allowed an annual average groundwater withdrawal rate for the site not exceeding 250 gpm for a period of 5 years and then 30 gpm thereafter. In July 1982, the Applicants requested an amendment to the construction permits increasing the allowable annual average groundwater withdrawal rate from 30 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm was established in Amendments No. 6, dated August 27, 1982, to Construction Permits CPPR–126 and CPPR–127 for the CPSES Units No. 1 and No. 2, respectively. The staff evaluation of the increased site limit was predicated, in part, on the latest of the construction completion dates existing at the time, i.e., August 1, 1987 for Unit No. 2 (per Order dated April 30, 1982), or 5 years. The Applicants' present request to extend the latest construction completion date of Unit No. 2 for 5 years

necessitates evaluating the impact of continuing to withdraw groundwater for an additional 5 years at the annual average rate of 40 gpm.

The Applicants are withdrawing water from the Twin Mountains aquifer which is a confined aquifer in the vicinity of the site. From a geologic cross-section supplied by the Applicants, the Staff determined that the aquifer is about 200 feet thick, with its upper confining layer about 250 feet below the survace. The aquifer still has artesian pressure at the site, but this may change at the present yearly rate of aquifer decline.

The Staff used the Theis non-equilibrium equation in its previous impact assessment of groundwater withdrawal at a the site and which is appropriate for this case as well. The non-equilibrium equations should be used only with unconfined aquifers; however, it is expected to give a conservative estimate (over estimate) of drawdown in a confined artesian aquifer. Using the non-equilibrium equation, the staff calculated a drawdown of 2.8 feet at the nearest offsite well (8000 feet from the power block) for a constant pumping rate of 40 gpm over 5 years.

The Staff reviewed water level measurement data from 4 nearby observation wells for the period 1975 to 1987 and determined that even though there was a steady overall decline in water level for all wells, this decline could only partially be attributed to onsite pumping of groundwater. From this review of water level data, the staff could also determine that seasonal fluctuations in water level could be of the order of 3 to 10 feet.

In addition, it should be noted that the original staff impact evaluation for the construction permit was based on a five-year annual average withdrawal rate of 250 gmp or 657×10^8 gallons, followed by an annual average rate of 30 gpm until the end of construction, though this was subsequently amended to 40 gpm as discused earlier. As of July 1, 1987, approximately 5.29×10^8 gallons of groundwater had actually been withdrawn. Five additional years of withdrawal at the rate of 40 gpm would add 105×10^8 gallons to withdrawal, resulting in a total withdrawal of 6.34×10^8 gallons. Hence, total groundwater depletion of the aquifer is still less than that assumed in the original construction permit impact evaluation for the first 5 years of construction.

Based on its evaluation, the Staff has concluded that the calculated impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1992 is negligible and does result in any significant additional environmental impact. Further, the Staff's conclusion is substantiated by groundwater level data collected at the site during construction and periods of large water withdrawal.

Based on the foregoing, the NRC Staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addresing the proposed action is not required.

Alternatives Considered

The NRC Staff has considered that a possible alternative to the proposed action would be for the Commission to deny the request. If this alternative were executed, the Applicants would not be able to complete construction of the facility, resulting in the denial of the benefits to be derived from the production of electric power. This alternative would not eliminate the environmental impacts of construction which have already been incurred. If construction were not completed on the CPSES Unit No. 2, while construction continued on Unit No. 1, the amount of site redress activities that could be undertaken to restore some of the area to its natural state would be minimal. This slight environmental benefit would be much outweighed by the economic losses from denial of the use of a facility that is nearly complete. Therefore, the NRC Staff has rejected this alternative.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES.

Agencies and Persons Contacted

The NRC Staff reviewed the Applicants' request and applicable documents reference therein that support this extension, as well as supplemental information provided. The NRC did not consult with other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based on the environmental assessment, the Commission concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect this action, see the Applicants' request for extension dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988, available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

Dated at Rockville, Maryland, this 17th day of October 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88-24611 Filed 10-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-87]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility Operating License No. R-119; Westinghouse Electric Corp., Nuclear Training Reactor Facility

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order terminating Facility Operating License No. R-119 for the Westinghouse Electric Corporation Nuclear Training Reactor Facility located in Zion, Illinois, in accordance with the application dated July 8, 1987, as supplemented.

Environmental Assessment

Identification of Proposed Action

By application dated July 8, 1987 as supplemented, Westinghouse Electric Corporation requested authorization to decontaminate and dismantle its Nuclear Training Reactor Facility, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R-119. Following an "Order Authorizing Dismantling of Facility and Disposition of Commponent Parts," dated January 29, 1988, Westinghouse Electric Corporation completed the dismantlement and submitted a final survey report on April 11, 1988. Representatives of the Oak Ridge Associated Universities, (ORAU), under contract to NRC, conducted a survey of the facility on June 9 and 10, 1988. The survey is documented in an ORAU report "Confirmatory Radiological Survey of the Westinghouse Nuclear Training Reactor Facility Westinghouse Nuclear Training Center, Zion, Illinois," S. A. Wical, August 1988. Region III, in a

memorandum dated September 6, 1988, found that the ORAU report findings support the data developed in the licensee's final survey report.

Need for Proposed Action

In order to release the facility for unrestriced access and use, Facility Oerating License No. R–119 must be terminated.

Environmental Impact of License Terminiation

The Westinghouse Electric Corporation, indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which established acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of 5 micro R/hr above ground at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility Operating License No. R–119

Agencies and Persons Consulted

Personnel from the Radiological Site Assesment Program, Oak Ridge Associated Universities (an NRC contractor) assisted Region III in the conduct of the Termination Survey for the Westinghouse Electric Corporation Nuclear Training Reactor Facility.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based on the foregoing Environmental Assessment, the Commission has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility Operating License No. R–119, dated July 8, 1987, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Statndardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24612 Filed 10–24–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on September 27, 1988 (53 FR 187). Individual authorities established or revoked under Schedule A, B, or C between September 1, 1988, and September 30, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No schedule A authorities were established or revoked during September.

Schedule B

No schedule B authorities were established or revoked during September.

Schedule C

Department of Agriculture

One Confidential Assistant to the Administrator for the Agricultural Marketing Service. Effective September 21, 1988.

Department of the Air Force

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective September 9, 1988.

Department of Commerce

One Confidential Assistant to the Director, Executive Programs. Effective September 15, 1988.

One Congressional Liaison Officer to the Deputy Assistant Secretary for Congressional Affairs. Effective September 20, 1988.

One Confidential Assistant to the Secretary for Trade Information and Analysis. Effective September 21, 1988.

One Confidential Assistant to the Deputy Under Secretary for the U.S. Travel and Tourism Administration. Effective September 21, 1988.

One Confidential Assistant to the Assistant Secretary for Import Administration. Effective September 23, 1988.

One Special Assistant to the Assistant Secretary for Export Administration. Effective September 27, 1988.

One Special Assistant to the Assistant Secretary for Export Administration. Effective September 30, 1988.

Department of Defense

One private Secretary to the Principal Deputy Assistant Secretary of Defense. Effective September 27, 1988.

Department of Education

One Confidential Assistant to the Assistant Secretary's Senior Special Assistant for Scheduling and Briefing. Effective September 23, 1988.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 30, 1988.

One Special Assistant to the Director for Intergovernmental Staff Affairs. Effective September 30, 1988.

Department of Energy

One Staff Assistant to the Assistant Secretary for Congressional Intergovernmental and Public Affairs. Effective September 2, 1988.

One Confidential Assistant to the Special Assistant to the Secretary. Effective September 30, 1988.

Department of Health and Human Services

One Confidential Staff Assistant to the Director for the Office of Community Services. Effective September 8, 1988.

One Special Assistant for Compliance and Legal Assistance to the Director for the Office of Family Assistance. Effective September 9, 1988.

One Special Assistant to the Director for the Office of Family Assistance. Effective September 20, 1988.

One Deputy Director to the Director for the Office of Prepaid Health Care. Effective September 21, 1988.

One Special Assistant to the Deputy Assistant for Legislation (Health). Effective September 21, 1988.

One Special Assistant to the Administrator for Health Care Financing Administration. Effective September 26, 1988.

Department of the Interior

One Confidential Assistant to the Executive Assistant to the Secretary. Effective September 27, 1988.

Department of Justice

One Confidential Assistant to the Director for Community Relations Service. Effective September 21, 1988.

One Confidential Assistant to the Director for Asylum Policy Review. Effective September 23, 1988.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment and Training. Effective September 30, 1988.

Department of State

One Special Assistant to the Assistant Secretary for Bureau of Human Rights and Humanitarian Affairs. Effective September 19, 1988.

One Legislative Officer to the Assistant Secretary for the Office of Legislative Affairs. Effective September 23, 1988.

One Protocol Officer (Visits) to the Chief of Protocol. Effective September 23, 1988.

One Associate Director to the Deputy Assistant Secretary for Equal Employment Opportunity and Civil Rights. Effective September 23, 1988.

Department of Transportation

One Staff Assistant to the Federal Highway Administrator. Effective September 9, 1988.

One Special Assistant to the Director for the Office of Public Affairs. Effective September 16, 1988.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective September 21, 1988.

One Staff Assistant to the Inspector General. Effective September 29, 1988.

Department of the Treasury

One Executive Assistant to the Secretary of the Treasury. Effective September 8, 1988.

One Assistant Director, Travel and Special Event Services to the Director for Special Operations Division. Effective September 8, 1988.

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective September 21, 1988.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective September 7, 1988.

Environmental Protection Agency

Two Staff Assistants to the Assistant Administrator for Administration and Resources Management. Effective September 30, 1988.

Farm Credit Administration

One Executive Assistant to the Member. Effective September 29, 1988.

General Services Administration

One Confidential Assistant to the Commissioner for Public Buildings Service. Effective September 8, 1988.

One Confidential Assistant to the Deputy Administrator. Effective September 23, 1988.

International Trade Commission

One Staff Assistant (Legal) to the Commissioner. Effective September 6, 1988.

National Endowment for the Arts

One Special Projects Coordinator (Development) to the Chairman. Effective September 9, 1988.

National Transportation Safety Board

One Special Assistant to a Member. Effective September 16, 1988.

Small Business Administration

One Assistant Administrator to the Administrator for Public Communications. Effective September 16, 1988.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Constance Horner,

Director, U.S. Office of Personnel Management.

[FR Doc. 88–24533 Filed 10–24–88; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of science and Technology Policy (OSTP), will meet on November 10 and 11, 1988 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on November 10, recess and reconvene at 8:00 a.m. on November 11, 1988. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The November 10 and 11 meetings will be closed to the public.

The briefings on the current activities of OSTP necessarily will involve discussion of material that is formally and properly classified in accordance with the provisions of Executive Order 12356 in the interest of national defense or for foreign policy reasons. This is also true for the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Barbara J. Diering,

Office of Science and Technology Policy.

October 19, 1988.

[FR Doc. 88–24598 Filed 10–24–88; 8:45 am]

BILLING CODE 3170–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Canada Free-Trade Agreement; Extension of Deadline for Applications of Individuals To Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Determinations

AGENCY: Office of the United States Trade Representative.

ACTION: Extension until November 14, 1988 of period for receipt of applications from candidates to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the United States-Canada Free-Trade Agreement.

In an October 5, 1988 **Federal Register** notice (53 FR 39188–89) the Office of the

United States Trade Representative (USTR) invited applications from, and nominations of, U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on binational dispute settlement panels for the review of antidumping and countervailing duty matters under Chapter 19 of the United States-Canada Free-Trade Agreement. The notice stated that nominations were to be received by October 15, 1988 and applications by October 31, 1988. In order to provide more time for individuals to apply for inclusion on the roster of candidates, the period for receipt of applications has been extended to November 14, 1988. The period for receipt of nominations has not been extended.

FOR FURTHER INFORMATION CONTACT: Dorothy Balaban, Legal Assistant, Office of the General Counsel, at (202) 395–3432.

Judith H. Bello,

General Counsel.

[FR Doc. 88–24555 Filed 10–24–88; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26199; File No. SR–AMEX–88–22]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exercise of the Major Market Index Option

On September 9, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would change the exercise feature of its options on the Major Market Index ("XMI") from American-style to European-style. This change would permit exercise of XMI options only at expiration.

The proposed rule change was noticed in Securities Exchange Act Release No. 26079 (September 15, 1988), 53 FR 36929. No comments were received on the proposed rule change.

Currently, XMI options are subject to American-style exercise. American-style exercise permits holders of put and call options to exercise their options on any Exchange business day up to and including the last trading day (expiration Friday). European-style exercise, however, permits exercise only on expiration Friday.

The Exchange believes the change to European-style exercise will make the XMI options more appealing to investors. Currently, premiums on the XMI options reflect the risk that a long option holder will exercise before expiration and the option writer will be assigned. Without this risk, the Exchange believes XMI premiums will be lower and therefore more attractive to investors. Moreover, the Exchange believes the change to European-style exercise provides added certainty for market participants.[3]

The Amex proposes to implement the change in exercise style on a perspective basis effective at the October 1988 expiration rollover. At that time, the January 1989 expiration series will be listed with European-style exercise, with the November and December 1988 American-style series still outstanding at this time. February and March European-style series will be added at subsequent expiration rollovers.[4] The Exchange will advise its membership via circulars and other communications of the change to the XMI's exercise feature and the method of phasing in new series.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to facilitate transactions in XMI options by providing certainty to market participants, particularly hedgers, spreaders, and options writers, and by attracting investors through lower premiums. Moreover, the Amex has designed reasonable procedures to switch XMI options from American-Style to European-style without causing undue investor confusion.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–AMEX–88–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24579 Filed 10–24–88; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] Telephone conversation between Barbara D. Salmanson, Special Counsel, Amex, and Judith Poppalardo, Staff Attorney, SEC, on October 12, 1988.

[4] Amex and other exchanges currently trade options on broad-based and/or industry indexes with a European-style exercise feature. Accordingly, the proposed modification to the XMI exercise feature does not present any novel issues.

[5] 15 U.S.C. 78f (1982).

[6] 17 CFR 200.30–3(a)(12) (1986).

[Rel. No. 34–26194; File No. SR–Amex–88–17]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Amending Arbitration Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is proposing to amend Exchange Rules 602, 618 and 619 pertaining to the number of arbitrators required, the amount of the filing fee to be retained by the Exchange if an arbitration is withdrawn or settled prior to commencement of the first hearing session, and the monetary limit in simplified arbitrations involving public customers.

The text of the proposed rule change is available for review at both the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below.

[1] On September 27, 1988, the Commission received a letter from the Amex amending the language of Amex Rules 602 and 619 under the proposal, in order to conform more closely with the recently approved amendments to the Uniform Code of Arbitration, as adopted by the Securities Industry Conference on Arbitration.

The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Securities Industry Conference on Arbitration ("SICA") has recently approved amendments to procedures set forth in the Uniform Code of Arbitration pertaining to the number of arbitrators required, the retention by an SRO of a portion of the filing fee where an arbitration is withdrawn or settled before it has reached the hearing stage, and disputes eligible for resolution through simplified procedures. The proposed rule changes are intended to conform applicable Exchange rules to the modifications approved by SICA.

The amendment to Rule 602 would provide for a panel of no less than three (3) nor more than five (5) arbitrators required to hear a matter involving a public customer where the amount in controversy exceeds $10,000. Currently, only a panel of three arbitrators is required to hear a controversy, and the threshold amount in controversy is capped at $500,000. The modification would significantly simplify and expedite the arbitration process by limiting the potential for scheduling delays, and would lower costs connected with paperwork, duplication, mailing and honoraria.

The amendment to Rule 618 would increase from $25 to $100 the portion of the administrative filing fee to be retained by the Exchange if a matter submitted for arbitration is withdrawn or settled prior to the commencement of the first hearing session. The increase would help to further defray the expense of administering the arbitration forum and better distribute costs among those using it.

The amendment to Rule 619 would increase the limit on the size of claims involving public customers eligible for resolution pursuant to the Exchange's simplified arbitration procedures from $5,000 to $10,000, and would incorporate into the Rule a filing fee of $200 in cases where the amount in controversy is more than $5,000, but does not exceed $10,000. Arbitrations conducted pursuant to the simplified procedures require the appointment of just one arbitrator, and may be decided solely on the papers unless the claimant or the arbitrator requests a hearing. The amendment would enable more public customers to benefit from the advantages provided by this procedure in terms of the overall speed, efficiency and ease with which a dispute may be resolved.

(2) Basis

The proposed rule changes are consistent with section 6(b) of the Act in general and further the objectives of section 6(b)(5) in particular in that they are designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 18, 1988.

[FR Doc. 88-24580 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26195; File No. SR-MSE-87-11]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Deleting Article III, Rule 6.01 in its Entirety

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 3, 1987, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, Rule 6 of the Rules of the MSE is hereby amended as follows:

[Deletions Bracketed]

ARTICLE III

MEMBER CORPORATIONS

Officers, Directors and Principal Stockholders

Rule 6. No change in text.

[* * * Interpretations and Policies:]

[.01 Banks and Bank Holding Companies as Principal Stockholders.—At least until pending legal and legislative questions affecting such relationships are clarified, the Exchange will not approve a bank or bank holding company as a principal stockholder or parent firm of a member corporation.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to delete Article III, Rule 6.01 in its entirety to conform the Rule to current MSE policy. Such policy allows a member corporation to be either partially or wholly owned by a bank or bank holding company. This policy resulted from recent changes to the restrictions placed on banks or bank holding companies in respect to ownership or broker/dealers. There are approximately ten (10) current Exchange members that have as a principal shareholder a bank or bank holding company.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it removes restrictions upon certain broker-dealers so that such broker-dealers may become members of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-87-11 and should be submitted by November 15, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 18, 1988.

[FR Doc. 88-24581 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26196; File No. SR-MSE-88-7]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to the Automated Execution of "Stopped-Out-of-Range" Orders on a "Next Sale But No Better Than Last Sale" Basis

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1988 the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE is proposing a sixty (60) day pilot program which changes the method in which "stopped-out-of-range" orders are executed on the Exchange Floor. The proposed rule change will provide automated execution of such orders on a "next sale, but no better than the last sale" basis. Presently these orders are processed on a manual basis. This change represents an enhancement to the Midwest Automated Execution System ("MAX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, when an Exchange co-specialist receives a buy or sell order which if executed would create a new high or low price for the day, the orders are said to be "out-of-range"; and they are "stopped". These orders are then placed in the co-specialists open order file to be manually executed when conditions permit. The orders are then executed on a "next sale, but no better than the last sale basis."

The Exchange has determined that these "stopped out-of-range" orders could be handled more efficiently through the utilization of automated execution. The benefits from such automation are twofold: first, the customer is assured of execution of the order as soon as conditions warrant; and second, the co-specialist is not burdened by the need to constantly monitor and subsequently execute these orders manually. In periods of high volume, this procedure will assure timely execution of orders. Initially, only those orders of 399 shares or less will execute automatically. The following examples illustrate the manner in which "stopped, out-of-range" orders will execute:

—Where the market is ⅜ bid—⅝ offered, and the last sale was ½ occurring on an uptick, and where the high of the day is ½, a buy order is stopped.

—Where the next sale is ⅜, the order is filled at ½ (no better than the last sale).
—Where the next sale is ½, the order is filled is ½.
—Where the next sale is ⅝, the order is filled at ⅝ (next sale, but no better than the last sale.

This system enhancement is consistent with section 6(b)(5) of the Act in that it is intended to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

October 18, 1988.

[FR Doc. 88-24585 Filed 10-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34- 26202; File No. SR-NASD-88-26]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Establishment of a New Registration Category for Assistant Representative—Order Processing

Notice is hereby given that on September 29, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Schedule C of the NASD By-Laws to add an additional category of registration, Assistant Representative—Order Processing. Upon effectiveness of the proposed amendment, the new text would be designated Part IV of Schedule C and existing Parts IV–IX would be redesignated Parts V–X, respectively. The following is the full text of the proposed rule change:

Schedule C

REGISTRATION OF ASSISTANT REPRESENTATIVES—ORDER PROCESSING

(1) Registration Requirements

(a) All Assistant Representatives—Order Processing Must be Registered—All persons associated with a member who are to function as Assistant Representatives—Order Processing shall be registered with the Corporation. Before their registrations can become effective, they shall pass a Qualification Examination for Assistant Representatives—Order Processing as specified by the Board of Governors.

(b) Definition of Assistant Representive—Order Processing—Persons associated with a member who accept unsolicited customer orders for submission for execution by the member are designated as Assistant Representatives—Order Processing.

(c) Requirement for Examination on Lapse of Registration—Any person whose most recent registration as an Assistant Representative—Order Processing has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Corporation of a new application shall be required to pass a Qualification Examination for Assistant Representative—Order Processing.

(2) Restrictions

(a) Prohibited Activities—An Assitant Representative—Order Processing may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Persons registered in this category may not be registered concurrently in any other capacity.

(b) Compensation—Members may only compensate Assistant Representatives—Order Processing on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate their compensation to the number of size of transactions effected for customers. This provision shall not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit sharing plan or similar arrangement.

(c) Supervision—The activities of Assistant Representatives—Order Processing may only be conducted at a business location of the member that is under the direct supervision of an appropriately registered principal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below,

[1] The NASD originally submitted the proposed rule change on July 1, 1988 and an amendment on August 30, 1988.

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

The NASD currently requires that persons who accept customer orders be registered as General Securities Representatives. The growth of discount brokerage operations in recent years has raised questions regarding the appropriateness of this requirement and the desirability of establishing a new category of registration more reflective of the actual job responsibilities of those whose function is limited to the acceptance of unsolicited customer orders. The proposed rule change would establish the category of Assistant Representative—Order Processing for those employees of NASD members whose activities are so limited.[2]

The proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Securities Exchange Act of 1934, which provides for the establishment by the NASD of standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the establishment of a registered category for Assistant Representative—Order Processing imposes any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD received 65 comment letters in response to the publication of an Assistant Representative—Order Processing proposal in Notice to Members 87–47. Of these, 40% favored the proposal and 60% opposed it. Those who favored it stated that the new category represented an appropriate level of examination and registration, and that it would neither lower industry qualification standards nor present significant supervisory burdens. Those who opposed the proposal expressed concern that the qualification standards would be lowered and/or the supervisory burden of monitoring the activities of Assistant Representatives would be substantial. The NASD Board of Governors considered all of the comments, made some modifications to the proposal, and approved the proposed rule change as set forth in this Notice of Proposed Rule Change. In light of the comments raised about the NASD's ability to monitor the use of this new category of registration, the NASD has proposed special procedures to monitor compliance with the restrictions of the proposed category.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR–NASD–88–26 and should be submitted by November 15, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24653 Filed 10–24–88; 8:45 am]

BILLING CODE 8010–01–M

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[2] In a telephone conversation between Jacqueline D. Whelan, NASD and Katherine A. England, Branch Chief, OTC Branch, Division of Market Regulation, the NASD indicated to the Commission that the Association expects to file the exam relating to this category in January 1989.

[3] See letter from Jacqueline D. Whelan, NASD to Katherine England, SEC (August 29, 1988).

[Rel. No. 34–26197; File No. SR–PSE–88–14]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Revocation of a Market Maker Letter of Guarantee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1988, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule IV, section 77, paragraph (c), to reflect that a Letter of Guarantee is not considered revoked until a final letter of revocation (as opposed to an interim revocation) is filed, and to add Commentary .01, which requires that market makers subject to an interim revocation effect only closing transactions. (Brackets indicate language to be deleted, italic indicates new language.)

Rule VI

Letters of Guarantee

Section 77. (a) and (b) No change.

(c) "Revocation of Letter of Guarantee." A Letter of Guarantee filed with the Exchange shall remain in effect until a *final* written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Exchange Options Trading Floor of the Exchange. If such *final* written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. A *final* revocation shall in no way relieve a clearing member of responsibility for transactions guaranteed prior to the effective date of such *final* revocation.

Commentary:

.01 When an individual is subject to a written interim notice of revocation or has otherwise ceased to be a member of

the Exchange and open positions remain in a Market Maker Account, held by such individual, closing transactions only may be effected for such account for the period between the effective date of the written interim notice of revocation or the date the individual otherwise ceases to be a member and the effective date of the final notice of revocation required by paragraph (c) of this section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this amendment is to clarify the obligations of individuals subject to a written interim notice of revocation or who have otherwise ceased to be members of the Exchange, but retain open positions in a market maker account. Paragraph (c) of Exchange Rule VI, section 77, is amended to reflect that a Letter of Guarantee is not considered revoked until a final letter of revocation (as opposed to an interim revocation) is filed. The proposed Commentary .01 provides that such individuals may only effect closing transactions in such accounts during the period between the effective date of a written interim notice of revocation or the date the individual ceased to be a member of the Exchange and the effective date of the final written notice of revocation.

The Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("the Act"), in that it will serve to protect investors and the public interest by more clearly communicating a market maker's obligation to effect only closing transactions when no longer a member of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24582 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26200; File No. SR-PSE-88-21]

Self-Regulatory Organizations; Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Options Charges

I. Introduction

On August 25, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would adopt four options charges: The Market Maker Fee, the Market Maker Give-up Charge, the Stock Execution Fee, and the Independent Broker Fee.[2] The proposed rule change was noticed in Securities Exchange Act Release No. 26074, September 12, 1988, 53 FR 36524. No comments were received in response to the Commission's **Federal Register** notice of this proposal.

II. Description of Proposed Rule

As stated above, the proposed rule change would adopt four options charges proposed by PSE. First, the Exchange proposes a flat fee of $600.00 per month on all market makers. The Exchange states that the fee is intended to cover the cost of supporting the options trading system. Market makers without trading experience would be exempt from this fee for the first six months of their membership. Special members and market makers on a leave of absence would also be exempt. The proposed fee would be reviewed by the Exchange on a semi-annual basis.

Second, the PSE proposes a Market Maker Give-up Charge of $.075 on market maker business that is not effected by the market maker in person. The PSE states that this charge reflects, in part, the estimated time spent and costs incurred by the Exchange for the additional surveillance required to monitor these trades.

Third, the Exchange proposes a Stock Execution Fee, a flat monthly fee of $1,000 for each member firm that

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[1] 15 U.S.C. 78s(b) and 17 CFR 240 19b-4.

[2] The PSE's Market Maker Fee, Market Maker Give-up Charge, and Stock Execution Fee were originally approved by the Exchange and submitted to the Commission in File No. SR-PSE-88-11. Subsequently, the Stock Execution Fee was amended by the Exchange in File No. SR-PSE-88-16. In addition, that filing amended the Floor Broker Fee, previously adopted by the Exchange in SR-PSE-88-11, and changed it into the Independent Broker Fee. All four of these fees were deleted and then reinstated for a 60 day period by the Exchange in File No. SR-PSE-88-20. *See* discussion at p. 3, *infra*.

engages in a stock execution business or service on an agency basis.

Fourth, the PSE proposes an Independent Broker Fee of $.02 per contract side imposed only on transactions by independent brokers.

III. Discussion

As noted previously, three of the options fees in this proposed rule change, the Market Maker Fee, the Market Maker Give-up Charge, and the Stock Execution Fee, were originally adopted by the Exchange and submitted to the Commission in File No. SR–PSE–88–11.[3] Those fees became effective on filing with the Commission pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder. The Stock Execution Fee which was originally adopted by the PSE and submitted to the Commission in SR–PSE–88–11 imposed a fee of $.001 (1/10 cent) per share on all trades not executed on the PSE, with block trades of 50,000 shares or more capped at $50.[4] Subsequently, the Exchange filed another proposed rule change, File No. SR–PSE–88–16, that amended the Stock Execution Fee. The amended fee, which is the same fee submitted for permanent approval in the instant proposed rule change, is a flat monthly fee of $1,000 for each member firm that engages in a stock execution business or service on an agency basis. In addition to amending the Stock Execution Fee, SR–PSE–88–16 amended the Floor Broker Fee which also had been adopted in SR–PSE–88–11 and changed it into the fee that charged only independent brokers $.02 per contract side on transactions. The fee was renamed as the Independent Broker Fee. The amendments to fees adopted by the PSE and submitted in SR–PSE–88–16 were effective upon filing with the Commission.

The options charges proposed by this rule filing have been resubmitted for Commission consideration in response to a comment letter received by the Commission on August 18, 1988, ("August 18 Letter"), from George H. Van Hasselt, a PSE options market maker, objecting to three options fees (the Market Maker Fee, the Market Maker Give-up Charge, and the Stock Execution Fee) contained in SR–PSE–88–11. The August 18 Letter was accompanied by a petition objecting to the three specified fees signed by Mr. Van Hasselt and 45 other options market makers. In view of these objections, and at the request of the Commission, the PSE submitted on August 19, 1988, a proposed rule change, SR–PSE–88–20, that deleted four options fees—the Market Maker Fee, the Market Maker Give-up Charge, the Stock Execution Fee, and the Independent Broker Fee—and reinstated those fees for a sixty day period.[5] Concurrently, the PSE filed this proposed rule change, SR–PSE–88–21, requesting that the Commission grant permanent approval to the four options fees during the sixty day period that the fees would remain in effect under the terms of SR–PSE–88–20.

In his August 18 Letter, Mr. Van Hasselt contends that the Market Maker Fee, the Market Maker Give-up Charge and the Stock Execution Fee, as adopted by the Exchange in SR–PSE–88–11, unreasonably discriminate against market makers and create an unfair burden on competition. He asked that the Commission, pursuant to its authority under section 19(b)(3)(A) of the Act, abrogate those fees.

Specifically, Mr. Van Hasselt argues that the proposed $600 monthly fee for market makers unfairly discriminates against market makers. He contends that the PSE's statement that the fee is designed to cover the costs of supporting the market maker trading system is misleading and ambiguous. He asserts that the Exchange has not established any specific process for review of the fee, indicated any time limit for the duration of the fee, or proposed any specific process for review of the fee, and that the PSE has provided no estimate of the amounts that would be required to cover the targeted costs. Further, he argues that the undefined and indefinite nature of this charge is in sharp contrast with the fees charged equities specialists which are specifically designated to pay for the costs and further development of the Equities floor.

Mr. Van Hasselt alleges that the Market Maker Give-up Charge discriminates against market makers who choose to do business off the floor. He argues that the Exchange has not demonstrated that such off-floor transactions impose a greater expense to the Exchange and that the proposed fee imposes an additional burden on the market makers' ability to provide liquidity for floor brokers and the public.

Mr. Van Hasselt also argues that the proposed Market Maker Fee the Market Maker Give-up Charge, and the Stock Executiion Fee, impose an unfair burden on competition which will adversely affect the public. He contends that these fees will impose higher transaction costs on market makers forcing them to limit themselves to conducting trades that will have a higher profit margin. Thus, he argues, market makers will be more reluctant to participate in marginal transactions because higher transaction costs will make them prohibitively expensive.

Finally, Mr. Van Hasselt contends that the Exchange, contrary to the statement in its rule filing that it had extensive input from floor members, made little effort to discuss the proposed fees with the general membership of the Options floor until after the fees had been enacted by the Board of Governors. He notes that although approximately 250 of the nearly 550 members of the PSE are market makers, only two of the 16 members of the PSE Board of Governors are market makers. Mr. Van Hasselt argues that under-representation of market makers on the PSE's Board may account for the disproportionate burden of general costs that are paid by market makers.

In the notice of the proposed rule change that was prepared by the PSE and published by the Commission in the **Federal Register**, the Exchange provided a detailed response to the allegations and arguments in Mr. Van Hasselt's August 18 Letter. In brief, the Exchange argues that it had extensive discussions with members and member organizations in developing the proposed fees and contends that the fees are both reasonable and necessary.

The PSE asserts that it went through an extensive process of consulting with and solciting input from the Exchange's options members in the development of the options fees that were adopted by the Exchange and submitted to the Commission in SR–PSE–88–11. The PSE states that members were told at a general membership meeting on March 24, 1988, that additional capital would be required in order to meet the Exchange's operational, technology, and facilities needs. The PSE states that it informed members that the fees and charges that were contemplated would be designed to reflect the costs and value of services provided by the PSE, as well as the cost of new technology needed to underwrite future growth.

With regard to the options floor, the Exchange states that it established the Options Committee, composed of four options members along with the President and the Chief Financial Officer of the PSE. The Committee was charged with obtaining input on options fees from members and member

[3] *See* Securities Exchange Act Release No. 25927, July 20, 1988, 53 FR 28305.

[4] *See* Securities Exchange Act Release No. 26004, August 17, 1988, 53 FR 32315.

[5] The actions proposed in SR–PSE–88–20 were effective upon filing with the Commission under section 19(b)(3)(A) for the Act. *See* Securities Exchange Act Release No. 26073, September 12, 1988, 53 FR 36523.

organizations and with recommending various proposed fees to the PSE Board. According to the Exchange, after the PSE Board reviewed the Options Committee's recommendations a second member meeting was held on June 21, 1988, to discuss fees and charges that would be implemented. Those fees were then approved by the Exchange and filed with the Commission in SR–PSE–88–11.

With regard to Market Maker Fee, the Exchange states that the fee was intended to be a charge for services that were not covered by existing charges. Those services included maintenance of the order book and implementation of new technology such as the Pacific Option's Execution Transaction System ("POETS"). After assessing the cost of providing these and other services, the Exchange determined that a $600 Market Maker Fee was appropriate. The PSE argues that rather than this fee discriminating against market makers, as alleged in the August 18 Letter, the fee is intended to support the market system and to cover the costs of upgrading and implementing needed systems and operations. The Exchange also states that the concept of a flat fee rather than a transaction based charge was specifically recommended by the Options Members Organization.[6]

The PSE also disputes the allegation that the Market Maker Fee and the other proposed options fees were adopted by the Exchange as a result of under representation of options market makers on the PSE Board of Governors. The Exchange states that of the 16 members of the PSE Board (excluding the Chairman and the President), five are floor members while the PSE Constitution only requires two floor members. Of the five floor members on the Board of Governors, two are market makers. Three of the floor members on the Board are members from the options floor with one representative from each of the two equity trading floors. Moreover, the Exchange notes that the Options Committee, which recommended adoption of the proposed fees to the Board of Governors, has three options floor governors and one other options member. Two of the floor governors on the Committee were market makers, one of whom chaired the Committee. Further, the Exchange argues that while the Committee was aware that the recommended fees would impact market makers more heavily than other members they were also aware that market makers had contributed proportionably less to covering costs in the past.

Finally, the PSE points out that no written objections to this proposed fee were received by the Exchange and that the members who signed the petition objecting to the fee did not communicate their objections to the Options Committee.

Concerning Market Maker Give-up Charge, the Exchange disputes the allegation in the August 18 Letter that the charge will reduce liquidity and is an unfair burden on competition. The PSE argues that by charging market makers less for trades done in person, they will be more likely to execute trades in person and provide a follow-up market. The Exchange also argues that by providing an incentive to create a higher percentage of market makers in the trading crowd, it will increase competition in the crowd, facilitate order flow and liquidity, and better assure continuous, fair, and orderly markets.

With regard to the Stock Execution Fee, as discussed previously, the Exchange notes that the version of this fee filed in SR-PSE–88–11 and objected to in the August 18 Letter, a charge on stock executions made off the PSE of 1/10 cent per share with a cap of $50 for block trades of 50,000 shares or more, was amended in SR–PSE–88–16 and converted to a flat monthly fee of $1,000 for each member firm that engages in a stock execution business or service on an agency basis. The key argument raised in the August 18 Letter against the Stock Execution Fee, that it unfairly discriminates against a market maker who chooses to do business off the floor, does not apply to the newly amended version of the fee.

Further, the PSE rejects the allegation in the August 18 letter that implementation of the fee, in its amended form, would reduce liquidity or would discriminate against any type of member. Rather, the Exchange argues, the fee is solely designed to more equitably distribute floor costs among members utilizing PSE facilities.

The final fee proposed in this rule change, the Independent Broker Fee, was not addressed to in the August 18 Letter. As discussed above, this fee was originally adopted in SR-PSE–88–11 as a Floor Broker Fee. The fee was amended in SR–PSE–88–16 to apply only to independent broker transactions and was renamed. The Exchange states that this amended fee is the result of its effort to develop separate fees for institutional brokers and independent brokers based on the recognition that the two types of brokers utilize different Exchange services and facilities. Independent brokers are individual members who are not affiliated with any member firm and who conduct the majority of their business as floor brokers. The PSE states that although these brokers utilize Exchange facilities and services, no other charges are imposed on them. This contrasts with institutional brokers that do retail, correspondence retail, and institutional business. The PSE notes that institutional brokers are affected by other charges that were adopted and submitted to the Commission in SR–PSE–88–11 including booth fees and report charges.

The Commission has closely reviewed the fees in the proposed rule change, the objections raised to those fees in the August 18 Letter, and the response of the Exchange to those objections. The Commission has determined that the proposed fees are consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commission believes that the proposed fees are consistent with section 6(b)(4) of the Act in that they provide an equitable allocation of dues, fees, and other charges among members using the facilities of the PSE. Further, the Commission believes that the proposed fees are consistent with section 6(b)(5) of the Act in that they will enhance the Exchange's ability to facilitate transactions.

Concerning the comments on three of the proposed fees in the August 18 Letter, the Commission does not believe that the objections raised to the fees are valid. First, contrary to the allegations in the August 18 letter, the process of obtaining member input into the Exchange's procedure for development and adoption of the fees, as described by the PSE in its notice of the instant proposal, provided more than adequate opportunity for members to comment on fees considered by the Exchange. No comments were received that indicate that the process and procedures described by the Exchange in its notice were not in fact followed. Moreover, the PSE states that the objecting members did not raise objections to the proposed fees at any time during this process.

Second, it is clear that options members played a critical role in the Option Committee's development and recommendation of the proposed fees to the PSE Board of Governors for adoption. As stated by the PSE, options members composed the majority of the Committee and an options members was chairman of the Committee. In this regard, the Commission also finds no

[6] The Options Members Organization is an organization that represents a cross section of the PSE's options members and which studies the Exchange's operations.

basis to conclude that market makers are underrepresented on the PSE Board of Governors. As noted by the Exchange, there are five floor members on the PSE Board of Governors two of whom are options market makers. Article III, section 2(b), of the PSE Constitution only requires two floor members on the Exchange's Board.

Third, the Commission finds no basis to conclude that the proposed fees discriminate in any way against options market makers or options members. The proposed fees, as described by the Exchange, are specifically tailored to cover costs of market making operations or other specific services on the PSE options floor plus such additional costs for technology improvement as the Exchange has decided to implement. Moreover, the PSE has amended the Stock Execution Fee to eliminate the distinction between trades done on or off the PSE floor, and thus has removed the aspect of that fee objected to in the August 18 Letter.

Finally, the Commission does not agree with the allegations in the August 18 Letter that the proposed fees create an unfair burden on competition or that they will impair the liquidity of the PSE's market. The proposed options fees in SR–PSE–88–11 and SR–PSE–88–16 were part of an overall PSE fee proposal that adopted a comprehensive set of charges for the use of Exchange services and facilities for all PSE members. These fees were an effort by the PSE to develop a more equitable fee structure that would charge members only for the services and facilities they used. They replaced a more broadly based interim monthly fee, designed to meet the PSE's operational, technology and facilities needs, that was previously adopted by the Exchange and filed with the Commission is SR–PSE–88–06.[7] The Commission believes that the proposed options fees are a reasonable in that the Exchange will charge only for specific services and facilities used by the member. Although the August 18 Letter objected to the market maker charges as unduly burdensome, these fees do not appear to be so high as to impair PSE market makers from fulfilling their market marking obligations. Moreover, the August 18 Letter presented no specific evidence to demonstrate why these fees would be unnecessarily burdensome.

With regard to the proposed Independent Broker Fee, which was not discussed to in the August 18 Letter, the Commission believes that the proposed fee is reasonable in that it will charge independent brokers only for those Exchange services that they utilize. The Commission also notes that it did not receive any objections to the Independent Broker Fee either from the original Commission notice of its adoption in SR–PSE–88–16 or from the notice of the instant proposed rule change.

In conclusion, the charges proposed by the PSE appear reasonably designed to provide an equitable allocation of dues, fees, and other charges among members using the facilities of the PSE. In light of the lack of any evidence indicating that the charges are discriminatory or impose any burden on competition, the Commission will not disturb the PSE's business judgment in developing fees to defray its costs and expenses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24583 Filed 10–24–88; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Securities Exchange Act Release No. 25617, April 26, 1988, 53 FR 15761.

[Release No. 34–26193; File No. SR–PHLX–88–33]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Automated Options Market System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 3, 1988, the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4, hereby submits as a proposed rule change its requests to enhance and extend its pilot on the Automated Options Market ("AUTOM") system. AUTOM is an electronic delivery system of small options orders to the PHLX trading floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On March 31, 1988, the Commission filed an order granting accelerated approval of SR–PHLX–88–10, a proposed rule change establishing AUTOM on a pilot basis for 12 PHLX equity options until June 30, 1988.[1] On June 30, 1988, the Commission approved SR–PHLX–88–22 and authorized an expansion of AUTOM to 37 PHLX equity options and an extension of the pilot through December 31, 1988.[2] To date, even under the expanded pilot, the exchange has received insignificant order flow through AUTOM. The Exchange believes that this is due in part to the current pilot which only accepts market orders of five or fewer contracts in the near-term expiration month. Accordingly, the Exchange proposes to modify the existing 37 options pilot to make all pilot options' strikes and expiration months eligible to be handled by AUTOM and to increase the eligible order size for AUTOM to 10 contracts.[3] The Exchange believes that this modification will make AUTOM more competitive vis-a-vis similar systems currently being operated by other options exchanges.

In order to adequately assess the impact of these modifications on the pilot, the Exchange respectfully requests an extension of the modified AUTOM pilot until June 30, 1989.

[1] Securities Exchange Act Release No. 25540, 53 FR 11390.

[2] Securities Exchange Act Release No. 25868, 53 FR 25563.

[3] In this regard, the Exchange does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expansion of the pilot as proposed herein. In all other respects, the Exchange stands by its representations conveyed in letters to Howard Kramer, Assistant Director, Division, from Michael A. Finnegan, Senior Vice President, PHLX, dated March 22 and 30, 1988.

In all other respects, the Exchange commits to operating the pilot as represented in SR–PHLX–88–10 and SR–PHLX–88–22.

Because the purpose of the development and implementation of AUTOM is to improve the efficiency of execution of transactions in PHLX equity options through the use of new data processing and communications techniques, the proposed rule change is consistent with section 11A(a)(1) (B) and (C)(i) of the Act. The proposal is also consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24584 Filed 10–24–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88–10–30; Docket no. 45728]

U.S.-Mexico Air Transportation Operations

AGENCY: Office of the Secretary, DOT.

ACTION: Order 88–10–30, U.S.-Mexico Route Authority, Final Order, Docket 45728 (53 FR 28745, July 29, 1988).

SUMMARY: By this order the Department finalizes, with certain modifications, the tentative procedures established in Show-Cause Order 88–7–43, July 26, 1988, for acting on authority requested by U.S. carriers pursuant to the recently amended U.S.-Mexico Air Transport Agreement. The final order also adopts in part the proposals of Northwest Airlines, Midway Airlines, Continental Airlines, the National Air Carrier Association (NACA), and Alaska Airlines in which they request modifications to the procedures proposed in the show-cause order or request additional information from the Department regarding dormacy and/or U.S.-Mexico market information. The final order also requests U.S. carriers holding certificate or exemption authority to serve U.S.-Mexico markets to file certain route/city-pair dormancy information. It further requests carriers to file currently valid illustrative service proposals and proposed start-up dates with respect to applications filed for U.S.-Mexico authority. In addition, the order directs interested parties to file responses to answers and competing applications filed pursuant to Orders 88–7–43 and 88–8–67 no later than October 28 (for exemption applications), and November 4 (for certificate applications). The order also addresses other related pleadings and issues resulting from the issuance of Show-Cause Order 88–7–43.

ADDITIONAL INFORMATION: Interested parties may obtain a service copy of the order by calling the Licensing Division, (202) 366–2387 or by writing to the U.S. Department of Transportation, Licensing Division, P–45, 400 Seventh Street SW., Washington, DC 20590.

Dated: October 19, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–24588 Filed 10–24–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD–88–093]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, November 15 & 16, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows;

1. Introduction and Swearing-in of new Council Members.
2. Review of action taken at the 41st meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Propeller Guard Subcommittee report.
7. Presentation of Marine Underwiters.
8. Presentation of vertical sector sidelights for unmanned barges.
9. Mandatory Education Subcommittee report.
10. Report of Boating Education Seminar in Louisiana.
11. Report of the Personal Flotation Device (PFD) Subcommittee.
12. Presentation of definition of "Passenger" on recreational boats.
13. Presentation by Accident Reporting Subcommittee.
14. Final report of Personal Flotation Device (PFD) pamphlet project.
15. Presentation of the work of Marine Surveyors.
16. Update on Commercial Towing.

17. Report of Universal Registration Subcommittee.

18. Report on the National Association of State Boating Law Administrators' (NASBLA) Conference.

19. Presentation on Visual Identification for public service vessels.

20. Remarks by Chief, Office of Navigation Safety and Waterway Services.

21. Reply to members' items.

22. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman. members of the public may present oral statements at the meeting. Persons withing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Grisworld, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washingotn, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24547 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-091]

National Boating Safety Advisory Council Subcommittee on Accident Reporting; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Accident Reporting to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Seek broad based input and discuss available information and potential new sources of data.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24548 Filed 10-25-88 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-088]

National Boating Safety Advisory Council Subcommittee on Mandatory Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Mandatory Education to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 10:00 a.m. and ending at 4:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and formulate a report and recommendation to the Council on mandatory education.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24549 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

[CDG-88-092]

National Boating Safety Advisory Council Subcommittee on Personal Flotation Devices (PFDs); Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Personal Flotation Devices to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and replies received from foreign administrations regarding wearing of PFDs and standards for PFDs.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24550 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

[CDG-88-089]

National Boating Safety Advisory Council Subcommittee on Propeller Guards; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Propeller Guards to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 9:00 a.m. and ending at 4:00 p.m. The agenda for the meeting will be as follows:

1. Discuss the pros and cons of Propeller Guards.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from

Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24551 Filed 10-24-88 8:45 am]

BILLING CODE 4910-14-M

[CDG-88-087]

National Boating Safety Advisory Council Subcommittee on Universal Registration; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Universal Registration to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and formulate a report and recommendation to the Council on universal registration.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24552 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 17]

Final Passenger Motor Vehicle Theft Data for 1986

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data for 1986.

SUMMARY: .The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA has previously published 1986 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1986 data. This notice informs the public of those minor changes and of this agency's final calculations of 1986 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC, 20590 (202 366-4808).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for the 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comments the theft rates for 1986 on May 2, 1988 (53 FR 15610). NHTSA received three comments on the 1986 theft data, all of which were submitted by vehicle manufacturers.

Ford commented that the May 1988 publication did not include the theft rates of the 1986 Mercury Sable or Ford Taurus car lines. Ford is correct in that the Mercury Sable and Ford Taurus car lines were inadvertently not included in the 1986 theft rate listing. The 1986 theft rate listing has been corrected to include these two car lines.

General Motors (GM) informed the agency that it was appropriate in the past to report the Oldsmobile Delta 88 and Custom Cruiser car lines combined as one car line. But beginning with the 1986 model year, they are two separate car lines and should, therefore, be reported as separate entries. GM also informed the agency that the Buick LeSabre/Electra Estate Wagons are separate car lines from the Buick Electra and LeSabre. The LeSabre/Electra Estate Wagons are real wheel drive "B" cars and are available only as 4-door station wagons.

The 1986 theft rates have been edited to reflect all of GM's comments. The Oldsmobile Delta 88 and Oldsmobile Custom Cruiser are listed as separate car lines and the Buick LeSabre/Electra Estate Wagons are also listed as separate carlines. The Estate Wagon thefts were subtracted from the Buick LeSabre and Electra and the production figures remained the same as reported by the manufacturer.

Volkswagen of America, Inc., (Volkswagen) commented that the Audi Quattro car line was discontinued in the 1985 model year. However, the Audi 4000 and Audi 5000 each have a Quattro series that was continued in 1986. Therefore, the Audi Quattro thefts and production numbers should not be included in the theft rate listing as a separate car line, but with the appropriate Audi 4000 or 5000 car line. In addition, Volkswagen informed the agency that the Audi 4000/coupe production total in the theft rate list is 400 units less than the correct number reported in the final 1986 Corporate Average Fuel Economy report (CAFE).

The agency has corrected the theft rate listing to include the Audi Quattro thefts and production numbers with the appropriate Audi 4000 or Audi 5000 car line. The production number total for the Audi 4000/coupe has also been corrected to include the 400 units as reported in the final 1986 CAFE report. In reporting production figures for

developing theft rates, the agency uses the number in the mid-year CAFE reports that all manufacturers are required to provide to the agency. These reports are preliminary and are, therefore not as accurate as the final CAFE reports required to be submitted to the Environmental Protection Agency.

In addition to the above changes, the 1986 theft rate listing was also recalculated to reflect new theft data. Specifically, the May 2, 1988 **Federal Register** publication listed the Isuzu I-Mark with zero thefts and 31,201 cars produced. After intensive research, it was discovered that the vehicle identification number (VIN) decoding systems supplied by the National Automobile Theft Bureau and the Highway Loss Data Institute were inaccurate for the model year (MY) 1986 I-Mark. Corrections were made, and the theft data supplied by the National Crime Information Center (NCIC) were reevaluated. There were 141 thefts reported for the MY 1986 I-Mark in calendar year 1986, making the theft rate 4.5191. Additionally, the Suzuki Forsa listed zero thefts with 10,971 cars produced. Contact with the manufacturer provided the accurate VIN. This was applied to the NCIC data tape. Accordingly, the MY 1986 Suzuki Forsa had 76 thefts in calendar year 1986, making the theft rate 6.9274. Neither Isuzu or Suzuki questioned the zero thefts for their respective car lines.

The following list represents NHTSA's calculation of theft rates for all 1986 car lines. As noted above, this list is only intended to inform the public of 1986 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50

Issued on October 20, 1988.

Diane K. Steed,

Administrator.

BILLING CODE 4910-59-M

MODEL YEAR 1986 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1986

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
1	GENERAL MOTORS	CHEVROLET CAMARO	5,275	178,870	29.4907
2	GENERAL MOTORS	PONTIAC FIREBIRD	2,789	100,210	27.8316
3	GENERAL MOTORS	CHEVROLET MONTE CARLO	2,139	113,394	18.8634
4	GENERAL MOTORS	BUICK REGAL	1,257	87,064	14.4377
5	TOYOTA	MR2	485	34,084	14.2296
6	GENERAL MOTORS	PONTIAC GRAND PRIX	552	40,386	13.6681
7	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	2,788	208,367	13.3802
8	CHRYSLER CORP.	DODGE CONQUEST	33	2,791	11.8237
9	GENERAL MOTORS	PONTIAC FIERO	863	78,255	11.0280
10	GENERAL MOTORS	CHEVROLET CORVETTE	365	33,355	10.9429
11	MITSUBISHI	TREDIA	106	10,086	10.5096
12	HONDA	PRELUDE	301	30,200	9.9669
13	CHRYSLER CORP.	PLYMOUTH CONQUEST	25	2,653	9.4233
14	VOLKSWAGEN	CABRIOLET	116	12,400	9.3548
15	TOYOTA	COROLLA/COROLLA SPORT	1,616	179,269	9.0144
16	FERRARI	MONDIAL	2	250	8.0000
17	MITSUBISHI	STARION	44	5,532	7.9537
18	GENERAL MOTORS	PONTIAC GRAND AM	1,623	208,098	7.7992
19	NISSAN	300ZX	473	61,354	7.7094
20	GENERAL MOTORS	OLDSMOBILE 98 REGENCY	868	117,110	7.4118
21	MITSUBISHI	GALANT	125	16,949	7.3751
22	CHRYSLER CORP.	CHRYSLER EXECUTIVE SEDAN/LIMOUSINE	1	138	7.2464
23	GENERAL MOTORS	CADILLAC FLEETWOOD BROUGHAM (RWD)	342	47,464	7.2055
24	ROLLS-ROYCE/BENTLEY	CORNICHE/CONTINENTAL	1	140	7.1429
25	GENERAL MOTORS	CADILLAC DEVILLE/LIMO (FWD)	1,148	161,478	7.1093
26	MITSUBISHI	MIRAGE	190	27,204	6.9843
27	SUZUKI	FORSA	76	10,971	6.9274
28	FORD MOTOR CO.	LINCOLN TOWN CAR	759	112,964	6.7190
29	PORSCHE	911	50	7,456	6.7060
30	CHRYSLER CORP.	CHRYSLER FIFTH AVENUE/NEWPORT	508	78,417	6.4782
31	MAZDA	626	608	94,126	6.4594
32	CHRYSLER CORP.	DODGE 600	369	59,633	6.1878
33	FORD MOTOR CO.	FORD LTD	414	67,121	6.1680
34	MAZDA	323	487	79,565	6.1208
35	VOLKSWAGEN	SCIROCCO	61	10,122	6.0265
36	TOYOTA	CAMRY	938	157,469	5.9567
37	TOYOTA	CELICA	630	107,223	5.8756
38	CHRYSLER CORP.	DODGE LANCER	303	51,595	5.8727
39	GENERAL MOTORS	BUICK LESABRE/ELECTRA ESTATE WAGON	99	17,190	5.7592
40	FORD MOTOR CO.	FORD MUSTANG	1,136	198,925	5.7107
41	MITSUBISHI	CORDIA	46	8,146	5.6469
42	GENERAL MOTORS	CHEVROLET IMPALA/CAPRICE	1,159	210,758	5.4992
43	GENERAL MOTORS	BUICK SKYLARK/SOMERSET	711	130,316	5.4560
44	GENERAL MOTORS	PONTIAC SUNBIRD	609	111,702	5.4520
45	FORD MOTOR CO.	MERCURY CAPRI	79	14,569	5.4225
46	FORD MOTOR CO.	FORD THUNDERBIRD	817	156,581	5.2177
47	GENERAL MOTORS	OLDSMOBILE CUSTOM CRUISER	103	19,774	5.2089
48	MERCEDES-BENZ	500SEL	45	8,695	5.1754

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
49	CHRYSLER CORP.	DODGE DAYTONA	227	44,062	5.1518
50	NISSAN	SENTRA	703	138,838	5.0635
51	FORD MOTOR CO.	MERCURY COUGAR	651	130,019	5.0070
52	FORD MOTOR CO.	MERKUR XR4TI	67	13,553	4.9436
53	GENERAL MOTORS	CHEVROLET CHEVETTE	358	73,237	4.8882
54	GENERAL MOTORS	BUICK ELECTRA	551	112,808	4.8844
55	MAZDA	GLC	16	3,326	4.8106
56	MAZDA	RX-7	235	50,924	4.6147
57	GENERAL MOTORS	PONTIAC 6000	946	207,661	4.5555
58	ISUZU	I-MARK	141	31,201	4.5191
59	CHRYSLER CORP.	LEBARON GTS	329	73,143	4.4980
60	CHRYSLER CORP.	DODGE ARIES	432	97,429	4.4340
61	CHRYSLER CORP.	LASER	161	36,372	4.4265
62	CHRYSLER CORP.	PLYMOUTH HORIZON	219	49,578	4.4173
63	GENERAL MOTORS	PONTIAC BONNEVILLE	177	40,925	4.3250
64	MERCEDES-BENZ	380SL	48	11,111	4.3200
65	GENERAL MOTORS	PONTIAC PARISIENNE	313	72,520	4.3161
66	GENERAL MOTORS	CHEVROLET SPECTRUM	422	98,476	4.2853
67	TOYOTA	CRESSIDA	199	46,688	4.2623
68	GENERAL MOTORS	PONTIAC 1000	91	21,687	4.1961
69	PORSCHE	928	11	2,627	4.1873
70	PORSCHE	944	68	16,300	4.1718
71	MERCEDES-BENZ	500SEC	7	1,687	4.1494
72	CHRYSLER CORP.	DODGE COLT/COLT VISTA	280	67,502	4.1480
73	NISSAN	200 SX	212	51,580	4.1101
74	CHRYSLER CORP.	DODGE OMNI	182	44,526	4.0875
75	GENERAL MOTORS	BUICK RIVIERA	85	21,294	3.9917
76	CHRYSLER CORP.	PLYMOUTH RELIANT	482	122,675	3.9291
77	CHRYSLER CORP.	PLYMOUTH TURISMO	125	32,150	3.8880
78	GENERAL MOTORS	CHEVROLET CAVALIER	1,471	396,823	3.7069
79	NISSAN	MAXIMA	257	69,681	3.6882
80	HONDA	ACCORD	540	147,000	3.6735
81	CHRYSLER CORP.	DODGE CHARGER	125	34,095	3.6662
82	FORD MOTOR CO.	MERCURY MARQUIS	93	25,817	3.6023
83	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA/CRUISER (FWD)	1,245	348,571	3.5717
84	GENERAL MOTORS	CADILLAC CIMARRON	86	24,354	3.5312
85	ALFA ROMEO	SPIDER VELOCE 2000	18	5,106	3.5253
86	CHRYSLER CORP.	CHRYSLER LEBARON/TOWN & COUNTRY	321	91,111	3.5232
87	GENERAL MOTORS	CHEVROLET NOVA	577	167,763	3.4394
88	HYUNDAI	EXCEL	429	127,183	3.3731
89	GENERAL MOTORS	CHEVROLET CELEBRITY	1,360	404,520	3.3620
90	BERTONE	X-1/9	7	2,096	3.3397
91	BMW	3.	185	55,570	3.3291
92	FORD MOTOR CO.	FORD ESCORT	1,342	404,123	3.3208
93	FORD MOTOR CO.	FORD TEMPO	779	235,417	3.3090
94	FORD MOTOR CO.	MERCURY TOPAZ	187	56,620	3.3027
95	AUDI	4000/COUPE/QUATTRO	81	24,532	3.3018
96	NISSAN	PULSAR	213	64,560	3.2993
97	FORD MOTOR CO.	MERCURY LYNX	240	74,589	3.2176

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
98	AMC/RENAULT	ALLIANCE/ENCORE	252	78,470	3.2114
99	GENERAL MOTORS	BUICK CENTURY	823	257,022	3.2021
100	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	200	62,505	3.1997
101	GENERAL MOTORS	CHEVROLET SPRINT	211	66,290	3.1830
102	HONDA/ACURA	LEGEND	27	8,500	3.1765
103	CHRYSLER CORP.	PLYMOUTH GRAN FURY	28	8,864	3.1588
104	VOLKSWAGEN	JETTA	290	93,779	3.0924
105	ALFA ROMEO	GTV6	2	660	3.0303
106	CHRYSLER CORP.	PLYMOUTH CARAVELLE	104	34,545	3.0106
107	FORD MOTOR CO.	LINCOLN MARK VII	58	19,329	3.0007
108	VOLKSWAGEN	GOLF/GTI	197	66,039	2.9831
109	JAGUAR	XJ-S	15	5,070	2.9586
110	FORD MOTOR CO.	MERCURY GRAND MARQUIS	297	101,822	2.9169
111	FORD MOTOR CO.	FORD EXP	86	29,573	2.9081
112	GENERAL MOTORS	BUICK SKYHAWK	237	82,155	2.8848
113	CHRYSLER CORP.	CHRYSLER NEW YORKER	147	50,957	2.8848
114	LOTUS	ESPIRT	1	350	2.8571
115	TOYOTA	SUPRA	73	26,202	2.7860
116	SUBARU	SUBARU	160	59,940	2.6693
117	VOLKSWAGEN	QUANTUM	29	11,074	2.6187
118	MERCEDES-BENZ	190	53	20,459	2.5905
119	BMW	6.	6	2,323	2.5829
120	JAGUAR	XJ	46	17,898	2.5701
121	MERCEDES-BENZ	420SEL	37	14,840	2.4933
122	ISUZU	IMPULSE	36	14,457	2.4901
123	HONDA	CIVIC	522	212,000	2.4623
124	VOLVO	740/760	136	55,574	2.4472
125	PEUGEOT	505	31	13,211	2.3465
126	GENERAL MOTORS	OLDSMOBILE FIRENZA	87	37,672	2.3094
127	BMW	7.	14	6,080	2.3026
128	FORD MOTOR CO.	LINCOLN CONTINENTAL	42	18,271	2.2987
129	GENERAL MOTORS	CADILLAC ELDORADO	50	22,059	2.2666
130	GENERAL MOTORS	OLDSMOBILE TORONADO	34	15,102	2.2514
131	GENERAL MOTORS	OLDSMOBILE DELTA 88 ROYALE	487	219,131	2.2224
132	SAAB	900	85	39,085	2.1747
133	AUDI	5000S/QUATTRO	105	49,417	2.1248
134	MASERATI	BITURBO	2	973	2.0555
135	CHRYSLER CORP.	DODGE DIPLOMAT	34	16,585	2.0500
136	BMW	5.	41	21,080	1.9450
137	GENERAL MOTORS	BUICK LESABRE	171	89,174	1.9176
138	NISSAN	STANZA	99	52,398	1.8894
139	MERCEDES-BENZ	300D/E	43	23,186	1.8546
140	FORD MOTOR CO.	MERCURY SABLE	152	85,912	1.7693
141	GENERAL MOTORS	CADILLAC SEVILLE	36	21,106	1.7057
142	FORD MOTOR CO.	FORD TAURUS	368	219,032	1.6801
143	SAAB	9000	15	9,215	1.6278
144	FORD MOTOR CO.	FORD LTD CROWN VICTORIA	135	94,780	1.4244
145	VOLVO	DL/GL	82	59,790	1.3715
146	HONDA/ACURA	INTEGRA	30	24,000	1.2500

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
147	SUBARU	XT	51	44,280	1.1518
148	GENERAL MOTORS	OLDSMOBILE CALAIS	128	135,587	0.9440
149	TOYOTA	TERCEL	74	83,749	0.8836
150	FERRARI	TESTAROSSA	0	250	0.0000
151	ROLLS-ROYCE/BENTLEY	SILVER SPIRIT/SILVER SPUR/MULSANNE	0	410	0.0000
152	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	31	0.0000
153	MASERATI	QUATTROPORTE	0	73	0.0000
154	EXCALIBUR	PHAETON/ROADSTER	0	70	0.0000
155	ASTON MARTIN	LAGONDA	0	16	0.0000
156	ZIMMER	CLASSIC/ELEGANTE/CABRIOLET	0	170	0.0000
157	ROLLS-ROYCE/BENTLEY	CAMARGUE	0	40	0.0000
158	BITTER GMBH	BITTER SC	0	81	0.0000
159	FERRARI	328	0	600	0.0000
160	TVR	280I	0	225	0.0000

[FR Doc. 88-24658 Filed 10-24-88; 8:45 am]
BILLING CODE 4910-59-C

Sunshine Act Meetings

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 20, 1988.

TIME AND DATE: 10:00 a.m., Thursday, October 27, 1988.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Helen Mining Company, Docket Nos. PENN 86-94-R, PENN 86-181. (Issues include consideration of whether a violation occurred as the result of the operator's unwarrantable failure.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliiary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629, (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-24770 Filed 10-21-88; 3:46 pm]

BILLING CODE 6735-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, October 27, and 28, 1988.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (TENTATIVE).

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-sixth meeting. Consideration of grants application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated October 20, 1988.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 88-24608 Filed 10-21-88; 3:18 pm]

BILLING CODE 3155-01-M

federal register

Tuesday
October 25, 1988

Part II

Environmental Protection Agency

40 CFR Part 147

Washington Department of Ecology; Underground Injection Control Program for Indian Lands; Notice of Denial

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3464-6]

Washington Department of Ecology; Underground Injection Control Program for Indian Lands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial.

SUMMARY: The State of Washington has applied to EPA to administer a Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program covering all classes of injection wells on Indian lands. EPA has determined that the State's demonstration of jurisdiction is insufficient for EPA to approve the State of Washington's application to regulate UIC activities on Indian lands.

DATES: This notice shall become effective on November 25, 1988. In accordance with 40 CFR 23.7, this notice will be considered final action for purposes of judicial review at 1:00 p.m. Eastern Time on November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Harold Scott, Environmental Protection Agency (WD-132), Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Phone (206) 442-1846 or FTS 399-1846.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The UIC program seeks to protect as "underground sources of drinking water" (USDWs) aquifers capable of yielding a significant amount of water containing less than 10,000 mg/l of total dissolved solids. The SDWA, 42 U.S.C. 300f *et seq.*, authorizes EPA to regulate underground injection control activity on all lands in the United States, including Indian lands. The 1986 amendments to the SDWA sets forth the role of Tribes and EPA in implementing the UIC program on Indian lands. Section 1451 (added by the 1986 amendments) authorizes EPA to "treat Indian Tribes as States" if they meet certain statutory criteria. Tribes which satisfy the criteria for treatment as a State may then obtain primary enforcement authority over the UIC and Public Water Systems programs. EPA has already proposed regulations for treating Tribes as states under the SDWA programs (52 FR 28112; 52 FR 46712).

The 1986 amendments also added section 1422(e) to the Act, which directs EPA to promulgate a Federal UIC program for Indian lands where the Tribe has not yet assumed the program under section 1451 and where no other applicable program is in place. On May 11, 1987, EPA proposed direct implementation programs for Indian lands in all states where no program was in place, in compliance with section 1422(e) of the SDWA (52 FR 17684).

II. Washington's Application

The State of Washington submitted an application under section 1422 of the SDWA for the approval of an Underground Injection Control (UIC) program governing all classes of injection wells. On March 21, 1984 (49 FR 10555), EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the State's application. On April 23, 1984, the Confederated Tribes of the Colville Reservation requested that the public comment period be extended. On May 25, 1984 (49 FR 22110), EPA issued a public notice to extend the public comment period to obtain additional information to assist the Agency in approving or disapproving Washington's assertion of authority over injection well activities on Indian lands. Three public hearings were held: two at Moses Lake, Washington on July 11–12, 1984, and one at Seattle, Washington, on July 13, 1984. Oral and written comments were made by several Indian Tribes. No comments were received from the State of Washington. On August 23, 1984, EPA delegated the UIC program to the Washington Department of Ecology except for Indian lands. (49 FR 31875). In the same **Federal Register** notice EPA stated that it would make a decision regarding Indian lands after further review.

On May 11, 1987, EPA proposed a Federal UIC program for Indian lands in the State of Washington (52 FR 17684). In the same notice EPA stated that it would make a final decision in the near future on the State of Washington's application to administer a UIC program on Indian lands. Washington did not submit any comments on EPA's May 11, 1987 **Federal Register** notice. Elsewhere in today's **Federal Register**, EPA is finalizing the May 11, 1987 proposal, including promulgation of a UIC Direct Implementation program for Indian lands in the State of Washington.

III. Today's Decision

Under 40 CFR 145.24(b), the burden is placed on the state to demonstrate jurisdiction over Indian lands. This section provides that "[w]hen a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority." In the preamble to the rule including this section, EPA stated:

> Because states will lack jurisdiction in most instances to control activities on Indian lands * * * EPA will assume that a state lacks authority unless the state affirmatively asserts authority and supports its assertion with an analysis from the State Attorney General.

45 FR 33378 (1980).

EPA has reviewed the statement submitted by the State of Washington in support of the application of the Department of Ecology for delegation of the Underground Injection Control program under the Safe Drinking Water Act. After evaluation, EPA has concluded that the demonstration of jurisdiction in the Attorney General's statement is insufficient for EPA to formally authorize the State of Washington to regulate UIC activities on Indian lands.

A. Authorization To Regulate on Indian Lands Under the SDWA

The State asserts jurisdiction under the SDWA contending that section 1422 of the SDWA implicitly authorizes a state to regulate activities on Indian lands. The State argues that once EPA approves a state's program under the SDWA, that program applies to all persons conducting regulated activities within a state, including Indian lands. This is the same basis that the State of Washington provided to obtain jurisdiction over Indian lands as part of its application for interim authorization under the Resource Conservation and Recovery Act (RCRA). In the RCRA proceeding, EPA concluded that the State's submittal failed to meet the requirements of 40 CFR 271.7(b). EPA thus did not authorize Washington to administer the RCRA program on Indian lands (48 FR 34954 (1983)).

The State filed a petition for review of the RCRA decision in the United States Court of Appeals for the Ninth Circuit. See *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985). The court upheld EPA's decision that the State's demonstration of jurisdiction on Indian lands was insufficient under the EPA regulation. *Id.* The court noted that RCRA failed to delineate the implementation of hazardous waste regulations on Indian lands. The court, citing the Supreme Court decision in *Chevron* v. *NRDC*, 467 U.S. 837 (1984), noted that where a statute is silent, Congress has implicitly delegated policy-making authority to the Agency. The court then held that EPA's regulation interpreting RCRA not to grant the State jurisdiction over Indian lands was reasonable.

The requirements of 40 CFR 145.24 for SDWA primacy are identical to those required under RCRA. Thus, EPA must determine whether the language of the SDWA authorizes the State of Washington to regulate on Indian lands. EPA has concluded that the SDWA does not, by itself, constitute authorization for the State to regulate on Indian lands.

The argument that the SDWA authorizes state regulation on Indian lands is weaker than the same argument under RCRA. As discussed earlier, the 1986 amendments to the SDWA set forth the role of Tribes and the EPA in implementing the UIC program on Indian lands. The 1986 amendments reflect Congressional intent to promote tribal regulation of UIC activities on Indian lands with Federal approval. Thus, EPA disagrees with Washington's assertion that Federal approval of a state UIC program empowers the state to regulate UIC activities on a reservation. There is no explicit language in the SDWA to support that interpretation. Furthermore, such an interpretation would negate the apparent Congressional intent of the 1986 amendments.

B. Authorization To Regulate on Indian Lands Under State Law

1. Legal Structure

Washington asserts another basis for claiming jurisdiction over UIC activities on Indian lands. The State indicates that its laws are applicable throughout the geographic borders of the State, inlcuding Indian lands, even absent explicit authorization under the SDWA.

The Supreme Court in *White Mountain Apache Tribe* v. *Bracker* discussed the principles that determine whether a state civil regulatory statute is applicable within a reservation. 448 U.S. 136, 144–145 (1980). The Court concluded that the imposition of state motor carrier license and fuel taxes on two non-Indian corporations engaged in logging on Indian lands was preempted by a Federal program for regulating reservation timber.

In pertinent part, the Court stated that:

> [There are] two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be preempted by Federal law. Second, it may unlawfully infringe 'on the right of reservation Indians to make their own laws and to be ruled by them.' The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members * * * The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been preempted by operation of federal law. As we have repeatedly recognized, this tradition is reflected and encouraged in a number of Congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development. Ambiguities in federal law have been construed generously in order to comport with these traditional notions of sovereignty and with the federal policy of encouraging tribal independence. 448 U.S. at 142–144 (citations omitted).

The principles of tribal sovereignty and self-detemination were affirmed by the Supreme Court in 1987. The Court found that those principles outweighed competing interests asserted by the State of California and by non-Indians. In *California* v. *Cabazon Band of Mission Indians*, 107 S.Ct. 1083 (1987), the Court recognized tribal authority to regulate activities on reservation lands in holding that California and Riverside County could not assert jurisdiction over bingo and gambling activities conducted by Indians on Indian land, even though the primary customers for the activities were non-Indians. The Court found that neither Pub. L. 83–280 nor the Organized Crime Control Act of 1970 (OCCA) authorized the State or county to impose gambling laws or ordinances on the reservation.

The State of Washington has the burden of showing that its authority under state law to regulate UIC activities is not preempted by Federal law, and that state regulation will not infringe tribal self-government. As the Supreme Court clearly stated in *Cabazon*,

> "[S]tate jurisdiction is pre-empted * * * if it interferes or is incompatible with federal and tribal interests reflected in federal laws unless the State interests at stake are sufficient to justify the assertion of state authority." The inquiry is to proceed in light of traditional notions of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development.

Cabazon, 107 S.Ct. at 1092 (quoting *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, 333–35 (1983)). Furthermore, tribal interests are accorded more weight when non-Indian conduct "threatens or has some direct effect on political integrity, the economic security, or the health or walfare of the tribe." *Montana* v. *United States*, 450 U.S. 544, 566 (1981).

2. Interest Analysis

The remainder of this notice applies these principles through an examination of the interests of the Federal, tribal, and state governments in the regulation of UIC activities on Indian lands.

a. *Federal and Tribal interest.* The United States Environmental Protection Agency supports a policy of tribal self-government in cooperation with the Federal government. In June, 1981, the Administrator of EPA directed the EPA Office of Federal Activities to assemble a study enabling EPA better to apply its environmental programs to Indian tribes and reservations. In July 1983, EPA released its study of *Administration of Environmental Programs on Indian Lands* ("EPA Indian Lands Study").

The EPA Indian Lands Study culminated in the release of an EPA Indian Policy and Implementation guidance in November 1984. The EPA Policy stated that the two principal EPA directives were to implement the Federal law on Indian reservations in a manner responsible to the particular legal and political status of tribes and to "ensure the close involvement of Tribal Governments in making decisions and managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government)." EPA Indian Policy, page 2.

EPA has carried out the policy of self-determination in administering the various environmental statutes. For example, EPA promulgated regulations under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") authorizing tribes to develop their own programs for certification of pesticide applicators at a time when the statute provided only that "states" could submit certification plans. *See* 40 CFR 171.10. Similarly, EPA delegated to Indian tribes the authority to classify their reservations under the Prevention of Significant Deterioration ("PSD") standards of the Clean Air Act, even though the Act did not specifically authorize such delegation. 40 CFR 52.21(g)(4). Congress subsequently amended both statutes expressly to permit tribal participation as set forth in the regulation.

The Federal interest in tribal management of environmental statutes is especially strong under the Safe Drinking Water Act, in light of the 1986 amendments (as discussed above). In authorizing EPA to treat qualifying Tribes as states for purposes of primary enforcement responsibility, Congress expressed a clear preference for tribal regulation of UIC activities on Indian lands.

The tribal governments support EPA's position regarding protection of the reservation environments. In EPA's public hearings on the State's assertion of UIC regulatory jurisdiction over

Indian lands, numerous Tribes requested that EPA deny the State's application. The comments by Alan Moomaw, on behalf of the Confederated Tribes of the Colville Reservation, typify the comments submitted by Tribes on the State of Washington's application.

All lands within the Reservation regardless of ownership are to be regulated by EPA under Federal law. The need for unitary management of water sources on Indian reservations is without question, as the dangers posed by UIC activities to underground aquifers as well as to surface waters demand the imposition of a single comprehensive management scheme by EPA. This conclusion is grounded in the knowledge that actions taken on one parcel of land, no matter whether owned by an Indian or a non-Indian, can have an important environmental consequence on adjacent parcels on the reservation.

(Testimony by Alan Moomaw, Environmental Coordinator, Confederated Tribes of the Colville Reservation, July 11, 1984, at EPA Public Hearing on the State of Washington's application to regulate UIC activities on Indian lands.)

b. *State interest.* In its application for primary enforcement and supporting Attorney General's statement, the State of Washington failed to specify in any factual detail its interest in regulating UIC activities on Indian lands. The State merely cited general case law without any analysis or particularized inquiry into the reasons for asserting state jurisdiction over the UIC program. The State did not outline the impacts UIC activities on Indian lands might have off the Indian lands, *(Cf., Rice* v. *Rehner,* 463 U.S. 713 (1983)). Nor has the State shown why its interests would outweigh the strong Federal interest discussed above.

3. Conclusion

In conclusion, the State of Washington may not regulate UIC activities on Indian lands in lieu of the Federal government. As described above, a State must meet both prongs of a two-prong test to enforce its laws within Indian lands. Under the preemption test, a court examines the Federal, tribal, and state interests involved and determines whether state jurisdiction would interfere with Federal and tribal interests reflected in Federal law. Under the infringement test, a court examines whether the state action infringes on tribal self-government.

On balance, the Washington UIC primacy submission fails to satisfy the two-prong test, and thus, the State has failed to adequately demonstrate its jurisdiction. The Agency must deny the States's application to regulate injection activities on Indian lands.

IV. Supplementary Note

On May 11, 1987 (52 FR 17684), EPA proposed a Federal UIC program on Indian lands in the state of Washington. EPA proposed to bring the relatively few injection wells on these Indian lands under the standards for construction, operation, monitoring, reporting, and plugging contained in the generic Federal UIC program, as appropriate. At this time EPA is asking the tribal governments in the State of Washington to assist EPA in conducting an inventory of injection wells. Representatives are asked to contact Harold Scott at the above address and phone number.

LIst of Subjects in 40 CFR Part 147

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: September 29, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-24120 Filed 10-24-88; 8:45 am]

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federal register

Tuesday
October 25, 1988

Part III

Environmental Protection Agency

40 CFR Part 147
Underground Injection Control Programs on Indian Lands; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3311-1]

Underground Injection Control Programs on Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today extending the Federal Underground Injection Control (UIC) program to most Indian lands not currently regulated under the authority of the Safe Drinking Water Act (SDWA) as mandated by the SDWA Amendments of 1986. EPA will bring the relatively few injection wells on these Indian lands under the standards for construction, operation, and plugging contained in the generic Federal program. Elsewhere in today's **Federal Register**, EPA is establishing different programs for the lands of the Navajo, Ute Mountain Ute and other Tribes in New Mexico and Oklahoma. Today's notice does not include procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed in a separate notice.

DATES: This rule will become effective on November 25, 1988. For the purposes of judicial review, this rule will be considered final agency action at 1:00 p.m. eastern time on November 8, 1988.

ADDRESSES: The supporting information for this proposal is available for inspection and copying in Room 1143 ET, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, (202) 382-5558, at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

This rule makes the Federal "generic" Underground Injection Control (UIC) program which is codified at 40 CFR Parts 124, 144 and 146, applicable to the Indian lands in the 41 States and territories listed below. The Agency received very few comments on the proposed rule, and it is being promulgated almost precisely as it was proposed. (The Agency's responses to the comments are incorporated into this preamble.)

II. Background

The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of "Indian country" found at 18 U.S.C. 1151, and set forth in full at 40 CFR 144.3, for the purpose of defining "Indian lands" for the Direct Implementation Underground Injection Control (UIC) program.)

Section 1421 of the SDWA directs EPA to set minimum standards and criteria for approval of State-developed programs. States may develop their own programs regulating their injection wells. EPA reviews the State programs and approves them pursuant to section 1422 or section 1425 of the SDWA if they meet the standards of section 1421. This is called granting primary enforcement responsibility. If a State does not submit a program or if a submitted program does not meet statutory and regulatory standards, the EPA directly administers a program for the State under the regulations codified in 40 CFR Parts 124, 144 and 146. This is referred to as "direct implementation." At the moment there are 34 full and 6 partial programs for which a State has primary enforcement responsibility. EPA promulgated the Federal program for the direct implementation jurisdictions in May and November of 1984. (49 FR 20138 and 49 FR 45292)

III. Indian Programs in States With Primary Enforcement Responsibility

Because States generally could not or did not assert jurisdiction over the Indian lands within their boundaries, Indian lands were not included in the State-administered UIC programs. The Indian Tribes themselves could not administer a UIC program under the jurisdiction of the SDWA until the 1986 Amendments gave them the authority to do so. Only the Federal EPA had the authority to administer a UIC program for most Indian lands, but there was disagreement about what type of program should be established. EPA announced four possibilities and solicited comments on them:

1. The current Federal UIC minimum requirements;
2. Requirements patterned after the approved program in the State where the Indian lands are located, to the extent consistent with EPA's authority under the SDWA;
3. A combination of the first two; or
4. A different program containing requirements that respond to the concerns of the affected Tribal government.

These options were discussed in detail in **Federal Register** notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340). Many of the industry commenters indicated a preference for the second option, a program consistent with the surrounding State. However, a State's legislative authority for its UIC program is often broader than EPA's authority under the SDWA and therefore, many State provisions could not be adopted by EPA for inclusion in a program on Indian lands. A hybrid program combining aspects of the State and Federal program would not provide consistency. The permittee would have to contend with provisions different from the State program and EPA would have to administer provisions not found in the generic Federal program. On balance, EPA prefers to maintain consistency within the Federal programs unless specific deviations are necessitated by local conditions or Tribal concerns. Tailoring a program requires a great deal of work with the Tribe, State, and other affected parties. EPA is open to future proposals for such tailoring. However, given the mandate of the 1986 SDWA Amendments to promulgate UIC programs for all Indian lands within 270 days from the date the Amendments were enacted, EPA believes extending the generic Federal program is the appropriate course of action at this time for most Indian lands.

Most Tribes have not actively sought special programs for the regulation of their wells. However, the Navajo, Ute Mountain Ute, and some other Indian Tribes in New Mexico and Oklahoma did pursue special UIC programs. EPA has worked with those Tribes to develop programs based upon the Federal UIC program, but containing some modifications and additions. Tailored programs for these Indian Tribes are published elsewhere in today's **Federal Register** (and conforming amendments to descriptions of programs for their respective surrounding States are included in this rule). Modified programs may be developed for other Indian lands in the future at the request of the Tribe.

The 1986 SDWA Amendments allow Indian Tribes to apply for and assume primary enforcement responsibility once EPA has promulgated regulations governing that process. The status of primary enforcement authority will give Indian Tribes additional opportunity for control and modification of the UIC program on their lands. Today's action does not preclude Tribes from applying for primary enforcement responsibility.

EPA is today extending the Federal UIC requirements to Indian lands in the

following States which have primary enforcement responsibility for non-Indian lands:

Alabama	North Dakota
Arkansas	Ohio
Connecticut	Oregon
Delaware	Rhode Island
Florida	South Carolina
Georgia	Texas
Illinois	Utah
Louisiana	Vermont
Maine	Washington
Maryland	West Virginia
Massachusetts	Wyoming
Mississippi	Guam
Missouri	Commonwealth of the Northern Mariana Islands
New Hampshire	
New Jersey	
North Carolina	
District of Columbia	Virginia
Hawaii	Puerto Rico
Indiana	Virgin Islands
Kentucky	American Samoa
Pennsylvania	Trust Territory of the Pacific Islands
Tennessee	

(Note the difference in treatment of these States in the May 11, 1984 and November 15, 1984 preambles and those for which EPA clearly intended to include Indian lands.)

In some of these States Indian lands are being created where none existed before. For example, P.L. 100–89, August 18, 1987, recognized three Tribes in Texas for the first time. Therefore, EPA is today establishing UIC programs for any Indian lands which now exist or may exist in the future in these States. Also, Indian Tribes are seeking to acquire lands in some of these States which may have the effect of converting some State-regulated wells to Federal regulatory control. In the interest of consistency and to provide for future contingencies, it is appropriate to enact the programs covering all present and potential Indian lands now.

These rules have been under development for several years, but they will take effect 30 days after publication in the **Federal Register**. There is no retroactive application. A commenter was concerned that mechanical integrity tests for all wells on these Indian lands would be scheduled immediately because he mistakenly assumed that these wells on Indian lands would be tested on the same schedule as the wells covered by the original Direct Implementation program. The five year period within which all wells in the DI program must have an initial mechanical integrity test ends in 1988. Although all dates will be calculated from the effective date of this rule, it may be that wells on these Indian lands will be scheduled for mechanical integrity tests in fewer than 5 years. The five year period was chosen for the administrative convenience of EPA, and that of owners and operators because there were so many wells covered by the generic regulations. It should not take five years to test the relatively few wells on these Indian lands.

IV. Indian Programs for Direct Implementation States

Most Indian lands in the States with EPA-administered programs were included in those programs and thus already have operating UIC programs. The Seneca Indian lands in the direct implementation State of New York were not covered by the UIC program administered by EPA because the Seneca Tribe had expressed interest in having special regulations developed. However, recent contacts with the Tribe indicate that special UIC regulations are not currently a priority of the Tribe. Therefore, the Federal UIC program is today promulgated for the Seneca lands.

In eleven other Direct Implementation jurisdictions, no UIC program was previously promulgated because there did not appear to be any wells on the Indian lands, and in some cases no Indian lands at all:

V. Indian Land Program for the State of Washington

EPA is promulgating a Federally-administered generic program on Indian lands in the State of Washington, although the State of Washington asserted authority over Indian lands within the State as a part of its original application for primary enforcement authority. In a separate notice in today's **Federal Register**, EPA rejects the State's assertion. One Tribe in Washington, the Colville, requested and received a ban on all injection wells on the Colville Indian Reservation except for Class V wells. In their comments on the proposed rule, the Colville endorsed the language EPA used for the ban. The Tribe also strongly disputed the State's assertion of jurisdiction.

VI. Indian Land Program for the Wind River Reservation in the State of Wyoming

A. Mechanical Integrity Testing

Two commenters urged EPA to accept mechanical integrity tests (MITs) that were done on wells in the Wind River Reservation prior to the promulgation of this program. EPA has decided to accept well-documented MITs that meet EPA's standards as the initial MIT. Subsequent testing will be necessary before issuance of a permit, or within five years of the first test, whichever occurs first.

B. Aquifer Exemption

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/l TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

Some two hundred Class II wells, mostly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS on the Wind River Reservation in Wyoming.

There are currently eight separate oil and gas fields where injection is practiced on the Wind River Indian Reservation. The formations receiving injections are: the Darwin Sandstone (part of the Amsden); the Tensleep; the Crow Mountain (part of the Chugwater Group); the Phosphoria (also known as the Park City); the Muddy; the Nugget Sandstone; and the Frontier. The Tensleep, Phosphoria, Nugget and Frontier are the major aquifers associated with injection activity, while the Darwin, Muddy, and Crow Mountain are relatively minor water-bearing zones. Available data indicates that all of these aquifers contain water with less than 10,000 milligrams per liter of total dissolved solids and therefore meet the definition of underground sources of drinking water (USDWs).

Most of the aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. EPA's research confirmed that the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future. The one salt water disposal well is a converted oil producing well, and there is an active producing well less than one-quarter mile away. The zone is part of a hydrocarbon-producing formation, thus eligible for exemption both because of the commercial producibility of the oil and because the residual oil so contaminated the water in the aquifer that it is impractical to render it fit for human consumption.

As a result, portions of these aquifers qualify for exempted aquifer status. The exemptions are approved as part of this

program, allowing injection operations to continue without disruption. The boundaries of the exempted aquifers are described in § 147.2554. The only comment concerning this exemption supported it.

Exemptions are being made for the entire oil and gas fields affected. This will allow for construction of additional Class II injection wells within the exempted areas without the need for future exemptions (although other program requirements, including permitting, must be met). However, the exemptions are limited to the intended injection formations, and to Class II injection.

These exemptions will become effective at the same time as the program; 30 days after publication in the **Federal Register**.

VII. Office of Management and Budget Review Regulatory Impact Analysis

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis. This proposal would extend to a very small number of wells the Federal regulations already judged not to be major, even when applied to all injection wells in the country. This regulation was submitted to OMB for review as required by Executive Order 12291.

Regulatory Flexibility Analysis

The original proposal for the generic Federal program concluded that the Federal UIC program would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of those generic regulations to a very few owners and operators, of whom only some are "small entitites", will not change the original assessment. Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Date: September 29, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

2. 40 CFR Part 147, Subpart B—Alabama, is amended by revising the first sentence of § 147.50 introductory text to read as follows:

§ 147.50 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA.

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3. Subpart B—Alabama is amended by revising the first sentence of the introductory text of § 147.51 to read as follows:

§ 147.51 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Alabama, except those on Indian lands, is the program administered by the Alabama Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

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4. Subpart B—Alabama is amended by adding a new § 147.60 to read as follows:

§ 147.60 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Alabama is November 25, 1988.

5. Subpart D—Arizona is amended by revising § 147.151 to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, is administered by EPA. The UIC program for Navajo lands consists of the requirements contained in Subpart HHH of this Part. The program for all injection activity except that on Navajo Indian land consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984. The effective date for the UIC program on the lands of the Navajo is November 25, 1988.

6. Subpart E—Arkansas is amended by revising the first sentence of § 147.200 introductory text to read as follows:

§ 147.200 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Arkansas, except those wells on Indian lands, is the program administered by the Arkansas Department of Pollution Control and Ecology approved by EPA pursuant to section 1422 of the SDWA.

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7. Subpart E—Arkansas is amended by adding a new § 147.205 to read as follows:

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Arkansas is November 25, 1988.

8. Subpart H—Connecticut is amended by adding a new § 147.353 to read as follows:

§ 147.353 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Connecticut is November 25, 1988.

9. Subpart I—Delaware is amended by adding a new § 147.403 to read as follows:

§ 147.403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program

requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Delaware is November 25, 1988.

10. Subpart J—District of Columbia is amended by revising § 147.451 to read as follows:

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia, including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in the District of Columbia is November 25, 1988. The effective date for the UIC program in the rest of the District is June 25, 1984.

11. Subpart K—Florida is amended by revising the first sentence of the introductory text for § 147.500 to read as follows:

§ 147.500 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Florida, except for those on Indian lands is administered by the Florida Department of Environmental Regulations, approved by EPA pursuant to section 1422 of the SDWA. * * *

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12. Subpart K—Florida is amended by revising § 147.501 to read as follows:

§ 147.501 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Florida is November 25, 1988. The effective date for Class II wells on non-Indian lands is December 30, 1984.

13. Subpart L—Georgia is amended by adding a new § 147.553 to read as follows:

§ 147.553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Georgia is November 25, 1988.

14. Subpart M—Hawaii is amended by revising § 147.601 to read as follows:

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Hawaii is November 25, 1988. The effective date for the UIC program for all other lands in Hawaii is December 30, 1984.

15. Subpart O—Illinois is amended by revising the first sentence of the introductory text for § 147.700 to read as follows:

§ 147.700 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1422 of the SDWA. * * *

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16. Subpart O—Illinois is amended by revising the first sentence of § 147.701 introductory text to read as follows:

§ 147.701 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1425 of the SDWA. * * *

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17. Subpart O—Illinois is amended by adding a new § 147.703 to read as follows:

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Illinois on Indian lands in Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is November 25, 1988.

18. Subpart P—Indiana is amended by revising § 147.751 to read as follows:

§ 147.751 EPA-administered program.

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date of the UIC program for the rest of Indiana is June 25, 1984.

19. Subpart S—Kentucky is amended by revising § 147.901 to read as follows:

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program in the remainder of Kentucky is June 25, 1984.

20. Subpart T—Louisiana is amended by adding a new § 147.951 to read as follows:

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional

requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Louisiana is November 25, 1988.

21. Subpart U—Maine is amended by revising the first sentence of the introductory text of § 147.1000 to read as follows:

§ 147.1000 State-administered program.

The UIC program for all classes of wells in the State of Maine, except those on Indian lands, is the program administered by the Maine Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

22. Subpart U—Maine is amended by adding a new § 147.1001 to read as follows:

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Maine is November 25, 1988.

23. Subpart V—Maryland is amended by adding a new § 147.1053 as follows:

§ 147.1053 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maryland is November 25, 1988.

24. Subpart W—Massachusetts is amended by revising the first sentence of the introductory text of § 147.1100 to read as follows:

§ 147.1100 State-administered program.

The UIC program for all classes of wells in the State of Massachusetts, except those on Indian lands, is the program administered by the Massachusetts Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. * * *

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25. Subpart W—Massachusetts is amended by adding a new § 147.1101 to read as follows:

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Massachusetts is November 25, 1988.

26. Subpart Z—Mississippi is amended by revising the first sentence of § 147.1250 introductory text, to read as follows:

§ 147.1250 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

27. Subpart Z—Mississippi is amended by revising § 147.1251 to read as follows:

§ 147.1251 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on all lands in Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984. The effective date for the UIC program on Indian lands is November 25, 1988.

28. Subpart AA—Missouri is amended by revising the first sentence of the introductory text of § 147.1300 to read as follows:

§ 147.1300 State-administered program.

The UIC program for all classes of wells in the State of Missouri, except those on Indian lands, is administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 and 1425 of the SDWA. * * *

* * * * *

29. Subpart AA—Missouri is amended by adding a new § 147.1303 to read as follows:

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Missouri for all classes of wells on Indian lands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands is November 25, 1988.

30. Subpart DD—Nevada is amended by revising § 147.1451 and removing and reserving § 147.1452 as follows:

§ 147.1451 EPA administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Nevada is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective Dates.* The effective date of the UIC program for Indian lands in Nevada is June 25, 1984.

§ 147.1452 Aquifer exemptions. [Reserved]

31. Subpart EE—New Hampshire is amended by revising the first sentence of the introductory text of § 147.1500 to read as follows:

§ 147.1500 State-administered program.

The UIC program for all classes of wells in the State of New Hampshire, except those on Indian lands, is the program administered by the New Hampshire Water Supply and Pollution Control Commission, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

32. Subpart EE—New Hampshire is amended by adding a new § 147.1501 to read as follows:

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New

Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Hampshire is November 25, 1988.

33. Subpart FF—New Jersey is amended by revising the first sentence of the introductory text of § 147.1550 to read as follows:

§ 147.1550 State-administered program.

The UIC program for all classes of wells in the State of New Jersey, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

34. Subpart FF—New Jersey is amended by adding a new § 147.1551 to read as follows:

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Jersey is November 25, 1988.

35. Subpart GG—New Mexico is amended by revising the first sentence of the introductory text of § 147.1600 to read as follows:

§ 147.1600 State-administered program—Class II wells.

The UIC program for Class II wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Energy and Minerals Department, Oil Conservation Division, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

36. Subpart GG—New Mexico is amended by revising the first sentence of the introductory text of § 147.1601 to read as follows:

§ 147.1601 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V injection wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

37. Subpart GG—New Mexico is amended by adding a new § 147.1603 to read as follows:

§ 147.1603 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico is administered by EPA. The program consists of the requirements set forth at Subpart HHH of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico is November 25, 1988.

38. Subpart HH—New York is amended by revising § 147.1651 to read as follows:

§ 147.1651 EPA-administered program.

(a) *Contents.* The UIC program for the State of New York, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements in 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe is June 25, 1989. The effective date for the UIC program for the lands of the Seneca Indian Tribe is November 25, 1988.

§ 107.1660 [Removed]

39. Subpart HH—New York is amended by removing § 147.1660.

40. Subpart II—North Carolina is amended by adding a new § 147.1703 to read as follows:

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Carolina is November 25, 1988.

41. Subpart JJ—North Dakota is amended by revising the first sentence of the introductory text of § 147.1750 as follows:

§ 147.1750 State-administered program—Class II wells.

The UIC program for Class II wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

42. Subpart JJ—North Dakota is amended by adding text to § 147.1752 to read as follows:

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Dakota is November 25, 1988.

43. Subpart KK—Ohio is amended by revising the first sentence of the introductory text of § 147.1800 to read as follows:

§ 147.1800 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Ohio, except for those on Indian lands, is the program administered by the Ohio Department of Natural Resources, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

44. Subpart KK—Ohio is amended by adding a new § 147.1805 to read as follows:

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Efffective date.* The effective date of the UIC program for Indian lands in Ohio is November 25, 1988.

45. Subpart LL—Oklahoma is amended by revising the first sentence of the introductory text of § 147.1850 as follows:

§ 147.1850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Oklahoma, except those on Indian lands, is the program administered by the Oklahoma State Department of Health, approved by EPA pursuant to SDWA section 1422. * * *

* * * * *

46. Subpart LL—Oklahoma is amended by revising the first sentence of the introductory text of § 147.1851 to read as follows:

§ 147.1851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Oklahoma, including the lands of the Five Civilized Tribes, but not including those on other Indian lands, is the program administered by the Oklahoma Corporation Commission approved by EPA pursuant to SDWA section 1425.

* * * * *

47. Subpart LL—Oklahoma is amended by revising § 147.1852 to read as follows:

§ 147.1852 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the lands of the Five Civilized Tribes, is administered by EPA. The UIC program for Class II wells on the Osage Mineral Reserve consists of the requirements set forth in Subpart GGG of this part. The UIC program for all other wells on Indian lands consists of the requirements set forth in Subpart III of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for UIC program for Class II wells on the Osage Mineral Reserve is December 30, 1984. The effective date for the UIC program for all other wells on Indian lands is November 25, 1988.

48. Subpart MM—Oregon is amended by revising the section heading and the first sentence of the introductory text of § 147.1900 to read as follows:

§ 147.1900 State-administered program.

The UIC program for all classes of wells in Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

49. Subpart MM—Oregon is amended by adding a new § 147.1901 to read as follows:

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Oregon is November 25, 1988.

50. Subpart NN—Pennsylvania is amended by revising § 147.1951 to read as follows:

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Pennsylvania is June 25, 1984.

51. Subpart OO—Rhode Island is amended by revising the first sentence of the introductory text of § 147.2000 to read as follows:

§ 147.2000 State-administered program.

The UIC program for all classes of wells in Rhode Island, except those on Indian lands, is the program administered by the Rhode Island Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

52. Subpart OO—Rhode Island is amended by adding a new § 147.2001 to read as follows:

§ 147.2001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Rhode Island is November 25, 1988.

53. Subpart PP—South Carolina is amended by revising the section heading and the first sentence of the introductory text of § 147.2050 to read as follows:

§ 147.2050 State-administered program.

The UIC program for all classes of wells in the State of South Carolina, except for those on Indian lands, is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

54. Subpart PP—South Carolina is amended by adding a new § 147.2051 to read as follows:

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in South Carolina is November 25, 1988.

55. Subpart RR—Tennessee is amended by revising § 147.2151 to read as follows:

§ 147.2151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* Effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Tennessee is June 25, 1984.

56. Subpart SS—Texas is amended by revising the first sentence of § 147.2200 introductory text to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

Requirements for Class I, III, IV, and V wells. The UIC program for Class I, III, IV, and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

57. Subpart SS—Texas is amended by revising the first sentence of § 147.2201 introductory text to read as follows:

§ 147.2201 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

58. Subpart SS—Texas is amended by adding a new § 147.2205 to read as follows:

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the Indian lands program for the State of Texas is November 25, 1988.

59. Subpart TT—Utah is amended by revising the first sentence of § 147.2250 introductory text to read as follows:

§ 147.2250 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Utah, except those on Indian lands, are administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

60. Subpart TT—Utah is amended by revising the first sentence of the introductory text of § 147.2251 to read as follows:

§ 147.2251 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Utah, except those on Indian lands, is the program administered by the Utah Department of Natural Resources, Division of Oil, Gas, and Mining, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

61. Subpart TT—Utah is amended by adding a new § 147.2253 to read as follows:

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 30 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for this program for all other Indian lands in Utah (as well as for the program of the Navajo and Ute Mountain Ute) is November 25, 1988.

62. Subpart UU—Vermont is amended by revising the section heading and the first sentence of the introductory text for § 147.2300 to read as follows:

§ 147.2300 State-administered program.

The UIC program for all classes of wells for the State of Vermont, except for those on Indian lands, is the program administered by the Vermont Department of Water Resources and Environmental Engineering approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

63. Subpart UU—Vermont is amended by adding a new § 147.2303 to read as follows:

§ 147.2303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Vermont is November 25, 1988.

64. Subpart VV—Virginia is amended by revising § 147.2351 to read as follows:

§ 147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the remainder of Virginia is June 25, 1988.

65. Subpart WW—Washington is amended by adding a new § 147.2403 as follows:

§ 147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands in Washington is November 25, 1988.

66. Subpart WW is amended by adding a new § 147.2404 to read as follows:

§ 147.2404 EPA-administered program—Colville Reservation.

(a) The UIC program for the Colville Indian Reservation consists of a prohibition of all Class I, II, III and IV injection wells and of a program administered by EPA for Class V wells. This program consists of the UIC program requirements of 40 CFR Part 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements. The prohibition on Class I–IV wells is effective November 25, 1988. No owner or operator shall construct, operate, maintain, convert, or conduct any other injection activity thereafter using Class I–IV wells.

(b) Owners and operators of Class I, II, III or IV wells in existence on the effective date of the program shall cease injection immediately. Within 60 days of the effective date of the program, the owner or operator shall submit a plan and schedule for plugging and abandoning the well for the Director's approval. The owner or operator shall plug and abandon the well according to the approved plan and schedule.

67. Subpart XX—West Virginia is amended by adding a new § 147.2453 as follows:

§ 147.2453 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in West Virginia is November 25, 1988.

68. Subpart ZZ—Wyoming is amended by revising the first sentence of the introductory text of section § 147.2550 to read as follows:

§ 147.2550 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Wyoming, except those on Indian lands is the program administered by the Wyoming Department of Environmental Quality approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

69. Subpart ZZ—Wyoming is amended by revising the first sentence of the introductory text of § 147.2551 to read as follows:

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

70. Subpart ZZ—Wyoming is amended by adding a new § 147.2553 to read as follows:

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in Wyoming is November 25, 1988.

71. Subpart ZZ—Wyoming is amended by adding a new § 147.2554 to read as follows:

§ 147.2554 Aquifer Exemptions.

In accordance with § 144.7(b) and § 146.4 of this chapter, those portions of aquifers currently being used for injection in connection with Class II (oil and gas) injection operations on the Wind River Reservation, which are described below, are hereby exempted for the purpose of Class II injection activity. This exemption applies only to the aquifers tabulated below, and includes those portions of the aquifers defined on the surface by an outer boundary of those quarter-quarter sections dissected by a line drawn parallel to, but one-quarter mile outside, the field boundary, and is restricted to extend no further than one-quarter mile outside the Reservation boundary. Maps showing the exact boundaries of the field may be consulted at the EPA's Region 8 Office, and at the EPA Headquarters in Washington, DC.

AREAS TO BE EXEMPTED FOR THE PURPOSE OF CLASS II INJECTION ON THE WIND RIVER RESERVATION

Formation	Approximate depth	Location
Steamboat Butte Field		
Phosphoria	6,500–7,100	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
Tensleep	6,900–7,500	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
Winkleman Dome Field		
Tensleep	2,800–3,300	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Phosphoria	2,800–3,600	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Nugget	1,100–1,500	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Lander Field		
Phosphoria	1,100–3,800	T2S, R1E—Sections 12 and 13, E/2 Sec. 24, NE/4 Sec. 25. T2S, R2E—W/2 Sec. 18, W/2 Sec. 19, Sec. 30. T33N, R99W—Sec. 4.
NW Sheldon Field		
Crow Mountain and Cloverly	3,400–3,600	T6N, R3W—SE/4 Sec. 35, SW/4 Sec. 36. T5N, R3W—N/2 Sec. 1.
Circle Ridge Field		
Tensleep	1,500–1,800	T6N, R2W—Sec. 6, N/2 Sec. 7. T7N, R3W—SE/4 Sec. 36. T7N, R2W—SW/4 Sec. 31. T6N, R3W—E/2 Sec. 1.
Phosphoria	800–1,800	T7N, R3W—S/2 Sec. 36. T6N, R3W—NE/4 Sec. 1.
Amsden	700–1,200	T6N, R3W—Sec. 6.
Rolff Lake Field		
Crow Mountain	3,500–3,700	T6N, R3W—SW/4 Sec. 26, NW/4 Sec. 27.

72. Subpart AAA—Guam is amended by revising the first sentence of the introductory text of § 147.2600 to read as follows:

§ 147.2600 State-administered program.

The UIC program for all classes of wells in the territory of Guam, except those on Indian lands, is the program administered by the Guam Environmental Protection Agency, approved by EPA pursuant to SDWA section 1422. * * *

* * * * *

73. Subpart AAA—Guam is amended by adding a new § 147.2601 to read as follows:

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in the territory of Guam is November 25, 1988.

74. Subpart BBB—Puerto Rico is amended by revising § 147.2651 to read as follows:

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands in Puerto Rico is December 30, 1984. The effective date of the UIC program on Indian lands in Puerto Rico is November 25, 1988.

75. Subpart CCC—Virgin Islands is amended by revising § 147.2701 to read as follows:

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands in the Virgin Islands is December 30, 1984. The effective date for Indian lands in the Virgin Islands is November 25, 1988.

76. Subpart DDD—American Samoa is amended by revising § 147.2751 to read as follows:

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date for the UIC program on non-Indian lands is June 25, 1984. The effective date of the UIC program on Indian lands is November 25, 1988.

77. Subpart EEE—Commonwealth of the Northern Mariana Islands is amended by revising § 147.2801 to read as follows:

§ 147.2801 EPA-administered program.

(a) *Contents.* The UIC program for Indian lands in the Commonwealth of the Northern Mariana Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands is November 25, 1988.

78. Subpart FFF—Trust Territory of the Pacific Islands is amended by revising § 147.2851 to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for the Trust Territory of the Pacific Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply wih the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands of the Trust Territory of the Pacific Islands is June 25, 1984. The effective date for the Indian lands is November 25, 1988.

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Part IV

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Programs for Certain Indian Lands; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3311-2]

Underground Injection Control Programs for Certain Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating Federally administered Underground Injection Control (UIC) programs for the Navajo Indian lands, Ute Mountain Ute Indian lands, and other Indian lands in New Mexico and Oklahoma as part of its mandate to regulate all underground injection activity in the United States. These programs are based on the Federal program, but contain some additions and modifications. Elsewhere in today's **Federal Register**, the Agency is promulgating Underground Injection Control programs for all other Indian lands not already covered by an applicable UIC program. Together these actions will regulate all injection wells on Indian lands in order to protect underground sources of drinking water. Today's notice does not contain procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed in a separate **Federal Register** notice.

DATES: This rule will become effective on November 25, 1988. For the purposes of judicial review, this rule will be considered final agency action at 1:00 p.m. eastern time on November 8, 1988.

ADDRESSES: The record is available for inspection in Room 1143ET in the Underground Injection Control Branch, State Programs Division, Office of Drinking Water (WH-550E) EPA, 401 M Street SW., Washington, DC 20460. (202) 382-5594.

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SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) authorized EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of "Indian country" found at 18 U.S.C. 1151, as the definition of "Indian lands" for the Direct Implementation UIC program. It is set forth in full at 40 CFR 144.3). The 1986 Amendments to the SDWA specifically directed EPA to promulgate by March 1987 a Federal UIC program for all Indian lands not already covered by an applicable UIC program.

EPA has promulgated the "generic" Federal program contained in 40 CFR Parts 124, 144, and 146 for most Indian lands. All those not previously promulgated were promulgated today in a separate **Federal Register** notice. The "generic" Federal program is the same program that EPA administers on non-Indian lands in many States. A few Indian Tribes expressed interest in requirements that differ somewhat from the generic Federal requirements.

The SDWA and its regulations allow flexibility to respond to the unique conditions and needs of Indian Tribes, and EPA policy encourages such accommodation. The SDWA sets forth only very general criteria for establishing UIC programs. The SDWA directs the EPA to promulgate regulations establishing the minimum requirements for State UIC programs, and then to approve and promulgate individual programs for each State. The State programs must meet the requirements of EPA's regulations (except for State programs regulating Class II wells which are authorized under section 1425 of the SDWA), but need not be identical. Section 1421(b)(3) of the SDWA directs the Administrator to "permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State." Most of the State programs for States which have primary enforcement responsibility do differ from the Federal program. Although the State programs for the States in which EPA administers the programs basically consist of the Federal generic regulations, many of them contain variations.

Section 1451(a)(1), added by the 1986 SDWA Amendments, authorized the Administrator to treat Indian Tribes as States under the SDWA. This provision is distinct from the authorization to delegate to Indian Tribes primary enforcement responsibility and to provide grant and contract assistance. Section 1451 goes on to say that where treatment of Tribes as identical to States is inappropriate or infeasible the Administrator may use other means for achieving the purpose of the provision. EPA believes that allowing some variation in a Tribe's UIC program to accomodate its geological and historic differences, while maintaining a program no less stringent than the generic program, would achieve the purpose of the 1986 Amendments.

The EPA Indian Policy, issued November 8, 1984, committed the Agency to deal with Indian Tribes on a government-to-government basis, to assist them in developing the capability to manage their own environmental programs and to give great weight to their concerns when designing programs for their lands. Application of this policy to the UIC program has been discussed in the preambles to several regulations and is partially codified at 40 CFR 144.2. (47 FR 17578, April 23, 1982; 48 FR 40100, September 2, 1983).

II. Development of This Rule

This rule has been under discussion for several years. In **Federal Register** notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340), EPA asked for comment on four options for UIC programs on Indian lands including: (1) Programs identical to the Federal generic rules, (2) programs similar to those in the State surrounding the Indian lands, (3) programs including a combination of Federal and State provisions, and (4) new programs reflecting the concerns of the Tribe. There was no agreement among the States, the industry, and the Indian Tribes about which was the best option. While most Indian Tribes appeared to be content with the Federal generic program, certain tribes had special concerns or provisions that they wanted incorporated into any UIC program on their lands. The Navajo, Ute Mountain Ute, and several of the Oklahoma Tribes pursued their preferences for tailored UIC program provisions during the next few years.

The passage of the 1986 Amendments to the SDWA accelerated the decision process. On May 11, 1987, EPA proposed to extend the Federal generic UIC program to most Indian lands. In a separate **Federal Register** notice on the same day, the Agency proposed somewhat different programs for the lands of the Navajo, the Ute Mountain Ute, other Tribes in New Mexico and the Indian lands in Oklahoma not already covered.

Five public hearings on the "tailored programs" were held in New Mexico, Arizona, and Oklahoma. Sixteen people commented on them either at the public hearings or in writing afterwards. The commenters generally approved of the scheme of adding some variations to the Federal generic program, but changes were suggested for some of the individual sections.

III. Scope

Today's rule consists of two tailored programs. One covers all wells on the Navajo Indian lands, wells on the lands of the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado, and all wells on Ute Mountain Ute lands in Utah and New Mexico) and all wells on other Indian lands in New Mexico. The lands of the Navajo extend into the States of New Mexico, Utah, and Arizona, areas covered by EPA Regions VI, VIII and IX. The latest inventory of wells on Navajo Indian lands indicates there is a total of 704 Class II wells (458 in Utah, 241 in New Mexico, and 5 in Arizona), 87 Class III wells (all in New Mexico) and two Class V wells (both in New Mexico).

The Ute Mountain Ute lands extend into the States of New Mexico, Colorado and Utah, EPA Regions VI and VIII. There are 15 Class II wells on Ute Mountain Ute lands (12 in New Mexico and three in Colorado). EPA is already administering the generic Federal program for non-Class II wells on the lands of the Ute Mountain Ute in Colorado.

The remainder of the existing injection wells in New Mexico on Indian lands are three Class II wells on the Jicarilla Indian Reservation and three Class V wells on the Laguna Indian Reservation.

The second tailored program applies to all classes of wells on all Indian lands in Oklahoma, except for Class II wells on the Osage Mineral Reserve in Osage County and Class II wells on the lands of the Five Civilized Tribes (Choctaw, Cherokee, Chickasaw, Creek and Seminole). The Class II program for the Osage Mineral Reserve was promulgated on November 15, 1984, and may be found at 40 CFR 147 Subpart GGG. The Class II program on the lands of the Five Civilized Tribes was promulgated on December 2, 1981, as part of the State-administered program. (40 CFR 147, Subpart LL).

The latest inventory indicates that there are one Class I well and 194 Class II wells on the Indian lands in Oklahoma covered by this proposal. The wells are located on lands of 13 of the 33 tribes.

The UIC programs for most Indian lands outside the scope of this rule are identical to the Federal generic program, although a few programs ban some classes of injection wells. A notice of the promulgation of UIC programs for Indian lands in forty-one states and territories appears elsewhere in today's **Federal Register**. UIC programs on Indian lands in fourteen other states were previously promulgated. (52 FR 17680, May 11, 1987; 49 FR 45292, November 15, 1984; 49 FR 20138, May 11, 1984).

IV. Comments and Modifications to the Proposed Rule

EPA received relatively few comments on this proposed rule. Most of them concerned either the notice, mechanical integrity, or injection pressure provisions of the proposed rule. Comments on specific provisions and EPA's responses are incorporated into the section-by-section description which follows.

A. General Comments

EPA also received some general comments regarding the proposed rule. Two of the Indian commenters made general statements of support for the UIC programs which they believe will protect ground water. One of the Indian commenters also thanked EPA for informing and consulting his tribe as the proposal was developed. The Hopi Tribe emphasized its special situation, surrounded by the Navajo lands and sharing ownership of many resources with the Navajo. The Hopi had no suggestions for special provisions, but wanted to be sure that they would have an opportunity for future involvement. Finally, one of the States reiterated its preference for extending the State program to Indian lands. EPA continues to believe, as explained in the preamble to the proposed rule, that administering a State program would not be feasible. Some provisions of State UIC programs are dependent upon State authority. EPA would not have authority to enforce these provisions under the SDWA.

B. Jurisdiction Issues

Two commenters had questions about the definition of Indian lands and how EPA would set the jurisdictional boundaries for these programs. As mentioned above, the definition of Indian lands adopted for the UIC program is set forth in 40 CFR 144.3. Whatever definition is chosen, there will be disagreements about whether particular lands fall within the definition. An Indian tribe would probably object to a State exercising jurisdiction over lands it perceives as Indian lands, and a State would object to an Indian Tribe exercising authority over lands which it believes to be non-Indian lands. Thus, disputes could prevent both the State and the Indian tribe from exercising primary enforcement responsibility for a UIC program. In order to ensure regulation of injection wells and minimize any disruption, pending the resolution of jurisdictional disputes, EPA will implement the Federal UIC program for disputed lands.

The recently proposed EPA regulation to allow Indian Tribes to apply for primary enforcement authority under the SDWA does not define Indian lands over which the Tribe could exercise UIC authority. The proposed rule would allow neighboring governmental units to object to a Tribe's assertion of jurisdiction. When there is a conflicting claim, EPA will consult with the Department of the Interior and decide whether the Tribe has adequately demonstrated jurisdiction to administer a program under the SDWA. A Tribe may not proceed to the next step of applying for primary enforcement responsibility over a particular program until EPA has determined that the Tribe's jurisdictional showing is adequate.

This different approach is consistent with the different mandate for the primacy regulations. The primacy regulations allow for transfer of responsibility for the UIC (and other SDWA programs) under carefully delineated criteria specified in section 1451. On the other hand, the intent of the last sentence of section 1422(e) is to make sure that all Indian lands are covered by some UIC program. There will be cases in which a Tribe does not apply for primacy or cannot demonstrate its jurisdiction, but a State could not administer the UIC program on those lands. The EPA must administer the UIC programs for those lands.

One commenter wanted to be sure that jurisdictional decisions would be made ahead of time, as the program is being established, rather than on an ad-hoc basis later. Although this sounds sensible, it will not be possible. Advance decisions would delay the implementation of the program for an unacceptable amount of time. As described above, EPA will assume that lands described by the definition in 40 CFR 144.3 are Indian lands and will begin implementation of the UIC program on them. If disputed territory is later adjudged to be non-Indian lands, it will be deleted from the EPA Direct Implementation Indian land program and added either to the EPA (non-Indian land) DI program for that State or to the State program, as appropriate.

Another commenter suggested that for Class II wells, the definition of Indian lands be restricted to the reservation because that would be in line with other regulations of the oil and gas industry. As described above, EPA believes that restricting these regulations to the

reservations could result in unregulated wells on non-reservation Indian lands. The commenter went on to say that under the definition of Indian country "all a tribe has to do is buy a small parcel of land with a well on it and they will assume complete authority over an operation in which they have no interest." It appears that this commenter thought the regulations would confer primary enforcement responsibility on the Indian tribes, but that is covered under a separate set of regulations. Under this rule, the Federal EPA will regulate wells on whatever is considered Indian land. Furthermore, purchases of land by Indians or Indian tribes is not alone sufficient to make the land "Indian Country." If land owned by Indians is not held in trust or with restraints on alienation, it is no different than land owned by other persons. Thus, the State has authority over it and may implement its UIC program (assuming the State has been granted primacy). If ownership of mineral rights and the surface estate is split, and either is considered Indian lands, the Federal EPA will regulate the well under the Indian land program.

V. Program Contents—Provisions of the Navajo, Ute Mountain Ute, and New Mexico Indian Lands Program

The program for the Navajo, Ute Mountain Ute, and New Mexico Indian lands incorporates the Federal UIC program codified at 40 CFR Parts 124, 144 and 146 with certain additional requirements described below.

As more than one commenter pointed out, the proposed rule incorrectly listed the effective date of both tailored programs as June 10, 1987 (30 days after publication of the proposed rule). The effective date should have read "30 days after publication of the final rule in the Federal Register."

A. Public Notice of Permit Actions (§ 147.3002)

The proposed rule required actual, individual notification of intent to apply for a permit to landowners, tenants, and lease operators within one-half mile of the well, in addition to the notice to the affected Tribal government. Some oil industry commenters objected to the proposed notice requirement, particularly to tenants, saying that it was difficult and unnecessary. Both commenters thought it should be sufficient to notify the Tribal government. One commenter also thought the waiver provision was burdensome.

EPA has decided not to change the proposed notice requirement. Similar provisions are being implemented without undue difficulties in New Mexico and Oklahoma. Those commenting on proposed permit applications are frequently tenants and landowners. EPA believes that it is good practice to give notice to those actually on the land where new drilling is contemplated, and other kinds of notice may not be adequate in sparsely populated areas. Finally, if the requirement to give notice is too onerous in a particular situation, the permittee may apply for a waiver. The waiver may apply to an area rather than to a single permit.

Affected Tribal governments will be notified by owners or operators of an intent to apply for a permit. EPA will also provide to the affected Tribal governments all notices given to "affected States" under § 124.10(c) of this chapter.

A Bureau of Land Management (BLM) field office suggested that EPA notify local BLM and Bureau of Indian Affairs (BIA) offices of proposed permit actions at the same time as affected Tribal governments to facilitate review and processing. However, § 124.10(c)(1) already requires EPA to send notice of permit actions to federal agencies with jurisdiction over fish and wildlife resources and other "appropriate government authorities." BIA and BLM, which retain some jurisdiction over injection wells and the projects of which they are a part, constitute "appropriate governmental authorities." Thus, there is no need to establish by regulation additional notice for these federal agencies. EPA, BIA and BLM are developing Memoranda of Agreement covering mutual notice for these Indian lands.

The Navajo Tribe requested that it be notified of maximum injection pressures established for individual fields under the procedures of § 147.3006(b)(1). That paragraph requires the Director to provide opportunity for comment and public hearing according to the provisions of Part 124, Subpart A of this chapter before setting the field pressure, and informing the owners and operators in writing of the final decision. The Navajo wish to be apprised of the final decision. The Tribe will have been informed of the tentative decision under the procedures of Part 124 because affected Tribes will receive all notices sent to affected state governments whenever the procedures of Part 124 are used. EPA has no objection to providing notice of the final decision as well. Section 147.3006(b)(1) has been changed to add this notice.

B. Aquifer Exemptions (§ 147.3003(a))

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: An aquifer which supplies or which contains a sufficient quantity of ground water to supply a public water system and either; currently supplies drinking water for human consumption, or contains less than 10,000 mg/l TDS; and which is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA is aware that some Class II wells on the lands of the Navajo, particularly enhanced recovery wells, are injecting into aquifers with less than 10,000 TDS water. If the Agency had not designated them exempted aquifers under this rule, injection would have become illegal on the day the UIC program took effect. New wells may necessitate additional aquifer exemptions after program promulgation. Owners and operators may apply for them using established Agency procedures.

The exemptions included in this rule are limited to the injection formation only and to Class II wells. Some of the aquifers that EPA has exempted are at a great depth, an average of 5,400 feet. The aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. EPA has investigated the aquifers and solicited comment on them, and has found that the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future. The exempted aquifers are listed in Appendix A.

The Agency received four comments on the aquifer exemption provisions. The first suggested that EPA modify its regulations so that an operator could inject produced fluids back into the formation from which they came without any conditions or necessity for exemptions. This comment is directed at a long-established part of the Federal UIC program on which comments are no longer timely. Furthermore, the requirement for exemptions is based on the statutory mandate to protect all

aquifers which supply or can reasonably be expected to supply a public water system. EPA may only allow injection into a formation which has the capacity to supply a public water system upon a showing that there is some other reason why it would never be used for public water supplies; that it is not in fact an underground source of drinking water.

The second comment was from the Navajo Tribe who did not want EPA to exempt any aquifers until it had had a chance to comment. EPA's procedures require an opportunity for comment on requests for aquifer exemptions. The aquifer exemption requests received during the comment period on this proposal will be processed with separate notices of opportunity to comment after this rule becomes effective.

The Navajo also noted that the area around a well that is exempted is one-quarter mile while the area around a well which must be examined for abandoned and improperly completed wells is one-half mile, and suggested that they ought to be the same: Both one-half mile. The Agency believes that the cone of influence, the area in which pressure is changed by injection, is larger than the area which will actually receive the injected fluid. It is only necessary to exempt that portion which will be contaminated by injection fluid, not that part merely influenced by pressure. Thus, the Agency believes that it is appropriate to have a smaller area covered by the aquifer exemption.

Another industry commenter wanted the Agency to exempt aquifers within the areal extent of productive fields currently used for injection because it would allow operators to drill new wells in active areas without applying for permits. EPA points out that the premise of the suggestion is legally incorrect. Aquifer exemptions and permits are independent requirements. Even if the whole aquifer has been exempted, new injection wells require permits (with some exceptions). However, an owner or operator of a field which has been exempted may apply for an area permit under § 144.33. This permit allows new wells to be drilled without individual permits.

EPA chose to exempt only the area surrounding active wells because it believes that a restrictive policy is consistent with the SDWA. The SDWA presumes that aquifers are underground sources of drinking water, and the regulatory program should make the same presumption until someone demonstrates that a particular aquifer is not a USDW and that there is a reason to exempt it. As the preamble to the proposed rule stated, EPA will entertain requests for exempting whole fields. The commenter did not submit a request for its fields. EPA sees no reason to revise its policy, but will consider any request for aquifer exemptions submitted by this or any other owner or operator.

The same commenter also suggested that EPA should not rely on lists of exempted aquifers in the Regions, but should either publish them in the **Federal Register** or exempt all aquifers into which wells are currently injecting. EPA agrees that publication in the **Federal Register** will make it easier to check on the status of aquifers, and as the description of exempted aquifers turned out to be of a manageable length, the exempted portions of aquifers on these Indian lands are published as an appendix to today's rule. Minor exeptions granted in the future will not be published in the **Federal Register** because they are not considered substantial program revisions under § 145.32. (Minor exemptions are those associated with a single permit action or concerning an aquifer of more than 3000 TDS and related to a Class II, III or V well. See 48 FR 40108, Sept. 2, 1983). As is the case for all UIC programs, the Regional EPA offices will maintain a complete list of aquifer exemptions, both major and minor. Those desiring to ascertain the status of aquifers in the future should check with the Regional EPA offices as well as the CFR.

C. Aquifer Cleanup (§ 147.3003(b) and § 147.3011)

The generic Federal program requires owners and operators of Class III wells which inject in or through an exempted aquifer to demonstrate that the plugging and abandonment plan will protect underground sources of drinking water (USDWs). The Director of a UIC program must prescribe "aquifer clean-up and monitoring where he deems it necessary and feasible to ensure adequate protection of USDWs." (40 CFR 146.10(d)). This means that the mined area must be cleaned up to the extent necessary and feasible after cessation of mining so that contaminants from mining operations will not endanger the USDWs surrounding the exempted portion which had been mined.

Today's rule requires some clean-up and monitoring for Class III uranium projects located on these Indian lands and injecting in or through an exempted aquifer of 5,000 milligrams per liter (mg/l) total dissolved solids (TDS) or less, as needed to protect surrounding USDWs. The generic regulations at § 146.10(d) give the Director the discretion to prescribe aquifer clean up where he deems it necessary and feasible. The economic and technological feasibility of such clean-up for uranium mines has been demonstrated for the types of mining and geology likely to be covered by the program in projects in New Mexico and Texas. Although the rule requires some clean-up, the contaminants of concern and the actual level of clean-up and monitoring will be decided for each project and specified in its permit. The Director would continue to be able to use the discretion granted in § 146.10(d) in deciding whether to require clean-up and monitoring for other kinds of Class III projects and for uranium mining projects injecting in or through aquifers of 5,000–10,000 mg/l TDS.

The scarce water in this arid region is very valuable and justifies this higher level of protection, which has been specifically requested by the affected Tribes. All of the existing (though currently abandoned) Class III projects covered by this rule are located on Indian lands in New Mexico and New Mexico is the most likely location for new Class III wells. The New Mexico State UIC program requires levels of protection equivalent to those specified in this program.

Pre-injection formation water quality will be analyzed by the applicant for appropriate ground-water contaminants. The level of clean-up for each contaminant will be specified in the permit. It will be set as close as is feasible to the original conditions.

If a permittee finds, after reasonable attempts, that an approved clean-up plan has proven infeasible to achieve in practice, he may document for the Director the attempt and failure to achieve contaminant levels set in the permit standards and request a modification of the clean-up standards through the procedures in 40 CFR 144.39 and 124.5.

The permittee must submit a proposed schedule for clean-up to the Director for his approval at the time the permittee requests permission to plug and abandon the well (see § 146.34(c)). The owner or operator will continue clean-up and monitoring according to the clean-up schedule until notified by the Director that the conditions of his permit have been satisfied. The Director will base his decision on reports submitted by the operator and the results of water quality analyses. The permittee must notify the Director at least two weeks in advance of sampling dates and provide the opportunity for splitting samples with the Director.

EPA recommends to the Director the following procedure to determine when

sufficient clean-up has been achieved. After three consecutive sample sets (a "sample set" is one sample from each well designated in the permit) taken at a minimum of 30-day intervals, show that constituents from each well are at concentrations equal to or less than that required by the permit, the Director will allow the permittee to cease clean-up efforts. The permittee will be required to file with the Director a written report of the results of the analyses and a summary of clean-up efforts. After filing the report, sampling for all constituents listed in the permit would again be conducted at 30-day intervals for a minimum of three more sample sets and reported to the Director. (This makes a total of six sample sets.) The Director will determine within 120 days of receiving the sixth sample analysis whether or not clean-up has been achieved. Upon acknowledment in writing by the Director of final clean-up, the permittee may cease all monitoring and clean-up activities in the affected area.

One commenter suggested that EPA make clear that the level of contaminants in each well must meet the permit level, that they cannot be averaged. EPA has made that clarification.

D. Duration of Rule Authorization for Class I and III Wells (§ 147.3004, 3007(a))

Owners and operators of existing Class I and III wells must submit permit applications no later than 90 days after the program becomes effective. The generic Federal program contains a one-year deadline. The longer period was established for administrative reasons, as it was clearly impossible to process all of the Class I and III permits in all direct implementation programs in a shorter time. However, there is only one existing Class I well covered by this program and only three Class III projects. In addition, owners and operators have already gathered most of the information for related submissions to State agencies. Therefore, the shorter period for permit application should not be a burden to owners and operators or to EPA.

E. Additional Requirements for Wells Injecting Radioactive Waste (§ 147.3005 and § 147.3016)

Under the generic Federal program, wells which inject radioactive waste below the lowermost USDW are Class V wells and are not currently subject to specific technical standards (40 CFR 146.51). Today's rule continues to classify wells which inject radioactive waste as Class V, but requires them to comply with all permitting requirements pertaining to Class I wells (under the authority of § 144.25(a)(3)). Among other things, this rule requires owners and operators to obtain a permit before constructing a radioactive waste disposal well and to comply with Class I construction and operating standards and requirements. The Navajo Tribe specifically requested increased stringency for radioactive waste wells. Surrounding State UIC programs contain similar provisions.

The definition of "radioactive waste" contained in 40 CFR 144.3 is unchanged, and refers to any waste which contains radioactive materials in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2. However, wells which inject high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191 will continue to be covered by the general Class V regulations, and EPA will develop additional specific provisions should such a well be proposed.

EPA is not aware of any existing wells injecting radioactive wastes located on the Indian lands covered by this proposal. Any future radioactive waste disposal wells on Indian lands are expected to be associated with uranium mine sites.

F. Maximum Injection Pressure Limit for Rule-Authorized Class II Salt Water Disposal Wells (§ 147.3006(a))

Under the generic Federal regulations at 40 CFR 144.28(f)(3)(ii) and 40 CFR 146.23(a), the owner or operator is generally directed not to exceed whatever maximum pressure at the wellhead would assure that injection will not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDW.

Today's rule establishes a maximum surface injection pressure of 0.2 pounds per square inch (psi) for each foot of depth to the top of the injection zone for rule-authorized Class II salt water disposal wells on these Indian lands. This limit has been used for several years by the State of New Mexico and is considered by EPA to be a very conservative formula to prevent fracturing of the injection zone. For Class II wells in Utah, the maximum injection pressure allowed under the State-administered program is determined by the following equation: Maximum injection pressure = (.733 − .433 × specific gravity of injection fluid) × depth of injection. The equation for these Indian lands requires lower maximum injection pressures than the Utah program except where the TDS of the injected fluids exceed approximately 250,000 mg/l. Use of the formula will assure that maximum injection pressures do not exceed those currently in effect in the area, and because there is no necessity for calculation of fluid density or tubing frictional loss, it is easily administered by the regulatory agency and easily understood by the regulated community. Higher injection pressures may be granted under a permit, provided that the conditions of § 144.52(a)(3) are met.

One industry commenter suggested that EPA adopt for the Navajo lands the formula used by the State of Utah because most wells are in San Juan County, Utah, and because there is no evidence that Utah's formula will cause degradation of ground water. EPA believes that the formula it has chosen is appropriate for rule-authorized wells. The higher level of protection afforded through the use of this more conservative formula is warranted based on preliminary reports provided by the Utah Division of Oil, Gas, and Mining, which suggest there is an increasing salinity in an overlying USDW in the Aneth field. The EPA is cooperating with the State of Utah, Navajo Nation, and other federal agencies to develop a strategy to identify the actual pathways and sources of the increasing salinity and to determine if injection activities could be accentuating the problem. Lower injection pressures for rule-authorized wells are therefore deemed desirable at this time. Operators do have the flexibility to seek approval of higher injection pressures based on actual fracture pressure data when the relatively few existing saltwater disposal wells are permitted.

G. Maximum Injection Pressure for Enhanced Recovery and Hydrocarbon Storage Wells (§ 147.3006(b))

Owners or operators of enhanced recovery and hydrocarbon storage wells must submit formation specific maximum injection pressure values for fields or projects as they do in other Direct Implementation programs (see for example, § 147.1353 (Montana) or § 147.1654 (New York)). The Agency will then establish appropriate limits for formations or units based on these and other data. The establishment of such "field rules" for maximum injection pressure has been favored by EPA because fracture gradients may vary considerably within relatively small areas and usually cannot be accurately described by a single formula. Operators who wish to inject at a higher pressure than those set for the formation and field must demonstrate in writing to the

Director that the higher pressure will not initiate new fractures, propagate existing fractures, or cause the movement of fluid into a USDW. After an opportunity for a public hearing and public comment, the Director may grant the request for higher pressure.

Two commenters objected to limitations on injection pressure saying that they were too restrictive, that wells had been successfully operated without them on the Navajo reservation for years, and that such restrictions could also reduce Federal and Indian royalties from oil and gas production. The SDWA mandates EPA to protect underground sources of drinking water, and the Agency is not persuaded by these arguments to depart from its long-established policies on injection pressure. This is not a new issue for the UIC program. The SDWA directs EPA not to impede injection of brine brought to the surface in connection with oil and gas production unless it is essential to prevent endangerment of underground sources of drinking water. EPA continues to be convinced that some limitation on injection pressure is essential to prevent fracturing zones adjacent to USDWs and creating avenues of migration for contaminants from the injection zone. EPA considered comments similar to this one when promulgating the 1984 Direct Implementation rule and the technical rationale for limiting injection pressure has not changed. The limitations on injection pressure in this program are identical to those in other direct implementation programs, and like those programs allows adjustments of the maximum pressure for each well and field.

If the owner of a salt-water disposal well believes that the formula is unnecessarily restrictive in his case, he can request a higher pressure through a permit application in compliance with § 144.52(a)(3). The Director sets individual field pressures for enhanced recovery and hydrocarbon storage wells after opportunity for comment and hearing. If an owner or operator is still dissatisfied, he may demonstrate to the Director in writing that a higher pressure will not violate the performance standard of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request for a higher pressure after notice and opportunities for public hearing.

H. Information To Be Considered in Permit Applications (§ 147.3007(b), § 147.3013, and § 147.3015)

Owners and operators must submit certain information with permit applications in addition to that in the minimum Federal requirements listed at 40 CFR 146.14(a) and 146.34(a). These additional requirements, which include information on expected pressure and fluid changes and sampling methodology, are consistent with the program of the State of New Mexico and allow for a more thorough evaluation of permit applications. A portion of this additional information, required for Class III wells, is a direct result of the aquifer clean-up requirement discussed above.

I. Criteria for Aquifer Exemptions (§ 147.3008)

Several criteria for granting aquifer exemptions under the generic Federal program are set forth in 40 CFR 146.4. Under this Indian lands program an aquifer can not be exempted solely on the grounds that "the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system." This criterion, contained in § 146.4(c), will not apply for the Indian lands covered by this rule, although aquifers could still be exempted on the other grounds in § 146.4.

In most parts of the country, waters above 3,000 mg/l TDS might not reasonably be expected to supply a public water system. However, in the arid and rural Southwest lands for which this program is promulgated such water is used and needed. The higher level of protection is consistent with the New Mexico State program and is desired by the Indian Tribes.

One commenter objected to deletion of the criterion noting that if the aquifer might be expected to supply a public water system that it would not meet the other part of the two part exemption criteria anyway. It is true that this deletion does not change the substantive law, but it does shift the assumptions and change EPA's process for approval. Under 40 CFR 144.7, a Director's request for an exemption based on the 3,000 TDS criterion in § 146.4(c) will become final 45 days after submission to the Administrator, if the Administrator does not disapprove. The deletion of the criterion for this Indian land program means that aquifers with more than 3,000 TDS will not receive the semi-automatic approval of § 144.7(b)(3)(ii). Instead the drinking water potential of the aquifer will be specifically examined and the exemption requests will receive a final review at the Headquarters level under the procedures of § 144.7(b)(3)(i).

J. Area of Review (§ 147.3009)

The Federal minimum requirements, at 40 CFR 146.6, specify that the Director may establish the area of review around an injection well either by setting a fixed radius, not less than one-quarter mile, or through the use of an appropriate formula to calculate the zone of endangering influence.

For these Indian lands, EPA has adopted the area of review requirements currently used in the Utah and New Mexico programs. For Class II wells, the area of review is a fixed radius of one-half mile. For Class I and III wells, the area of review is a fixed radius of two and one-half miles. Alternatively, an applicant for a Class I or III permit may make either of two demonstrations. First, in suitable cases, he may present technical information to show that withdrawal from the injection zone exceeds injection and results in a net withdrawal from the injection horizon at all times. Second, with the approval of the Director, he may use a mathematical equation, such as the modified form of the Theis equation (set out in 40 CFR 146.6(a)(2)) to calculate a zone of endangering influence. If the applicant chooses to make one of the alternative demonstrations, he should also propose a specific area of review not less than one-quarter mile for the Director's consideration.

It might appear that the minimum one-quarter mile area of review for Class I and III wells affords less protection than the fixed radius of one-half mile for Class II wells. However, the smaller area of review for Class I and III wells will be approved only where both the net volume of injected fluids and the maximum injection pressures anticipated (which together define the zone of endangering influence) is much less than would be allowed under a one-half mile fixed radius. It is desirable to limit the zone of endangering influence because this reduces the land area in which there is potential for movement of fluids through unplugged wells.

The States of New Mexico and Utah use these area of review calculations because they are believed to be suitable to the local geologic and environmental conditions. EPA adopted them to satisfy the strong public desire to follow the surrounding State programs as closely as possible, and to give additional protection to the groundwater in this arid region.

K. Mechanical Integrity Tests (§ 147.3010)

The May 11, 1987, **Federal Register** notice proposed approval of radioactive tracer surveys for evaluating the absence of significant leaks under § 146.8(a)(2). Since then the Director of the Office of Drinking Water has approved use of radioactive tracer

surveys for all UIC programs (52 FR 35324, September 18, 1987). The proposed Indian land provisions were based on a prior draft of that approval. Now that the draft has become final and applies to all UIC programs, there is no reason to publish separate provisions on radioactive tracer survey for Indian lands. Therefore, EPA has deleted provisions concerning radioactive tracer surveys from the final rule.

Two people commented on radioactive tracers in this program. A trade association supported use of radioactive tracers for demonstrations required by 40 CFR 146.8(a) paragraphs (1) and (2). It also suggested allowing use of radioactive tracer surveys instead of pressure tests to precede monitoring of the annulus. In fact, under EPA's current rules, a radioactive tracer survey could replace the combination of pressure test and annulus monitoring. The commenter also thought it unnecessary to obtain the approval of the Director before using the radioactive tracer survey and to do it in conjunction with another test. Under the current rules, the radioactive tracer would be sufficient, without a parallel test and without advance approval under certain geological conditions. The State of Utah objected to the requirement of a pressure test prior to annulus monitoring and the Director approval of a radioactive survey. As mentioned above, a radioactive survey without prior approval may now be used for a part I demonstration and, under certain conditions, for a part II demonstration. (Part I refers to the first part of the standard for demonstrating mechanical integrity in 40 CFR 146.8(a)(i); "no significant leak in the casing, tubing, or packer" and part II refers to the second part of the standard in 40 CFR 146.8(a)(2): "no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.") Utah also objected to the requirement that a description of the MIT be submitted for EPA approval saying that it would delay permitting. The provision for Director approval had been intended to apply to the radioactive tracer surveys. Now that the Agency has established policy on the radioactive tracer surveys, advance approval is no longer necessary. Therefore, the requirement has been deleted from this final rule.

The State of Utah also opposed the requirement for all wells to pressure-test before monitoring the annulus because some wells are sufficiently pressured during completion and because it is irrelevant where there is no USDW to protect. If an owner or operator does not wish to do a pressure test, he may now perform a radioactive tracer survey instead. If there is no USDW, the owner or operator may request the Director to reduce or waive certain requirements under § 144.16.

L. Construction Requirements (§§ 147.3012, 147.3014)

Section 146.12(b) of the generic regulations requires all Class I wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. As in other direct implementation programs, EPA is implementing the broad directive of the regulation by imposing specific cementing requirements appropriate to the local geologic conditions. Section 147.3012 requires that the entire casing-borehole annulus of Class I wells be cemented from bottom to surface, as the New Mexico State UIC program requires.

Class III operators will also have to provide a description of the radiological characteristics of the formation fluids, a necessary part of the plugging and abandonment plan that includes aquifer clean-up. Monitoring wells may be required by the Director (under the authority of § 144.52(a)(9)) for USDWs below the injection zone of Class III projects, in addition to those above the injection zone already required by EPA Federal regulations, if these USDWs may be affected by mining operations (§ 147.3014).

The Navajo commented that a complete radiological and chemical characterization should be required under both § 147.3014 and § 147.3015. This would be redundant because § 147.3015 applies to all Class III wells, existing as well as newly drilled.

VI. Program Contents—Provisions of the Program for Lands of Certain Oklahoma Indians

A. Introduction

EPA is today also promulgating a tailored UIC program covering lands of most Oklahoma Indian Tribes. Currently, the State of Oklahoma administers the approved UIC program for non-Indian lands and for Class II wells on the lands of the Five Civilized Tribes. 40 CFR 147.1850–147.1851 and 46 FR 58489 (Dec. 2, 1981). EPA administers the UIC program for Class II wells on the Osage Mineral Reserves. 40 CFR 147.1852. Today's rule establishes an EPA-administered program for all other Indian lands in Oklahoma including non-Class II wells on the lands of the Five Civilized Tribes and the Osage Mineral Reserve. There are at least 30 tribes in Oklahoma and currently over 200 wells not regulated under a UIC program on the lands of 13 of these tribes.

Like the program for the lands of the Navajo, Ute Mountain Ute, and New Mexico Tribes, the program for Indian lands in Oklahoma uses the generic Federal standards (40 CFR 124, 144 and 146) as a base and adds a few provisions which are similar to provisions in the State program. For a more detailed discussion of the background, development, and scope of this rule see sections I, II, and III above. A discussion of the scope and rationale of the requirements, comments made on them, and EPA's response appears below.

B. Notice (§ 147.3101)

Owners and operators and the Director of the program have public notice responsibilities beyond those in 40 CFR 124.10. An applicant must give notice of intent to apply for a permit to appropriate tribal governments. EPA will provide notice through newspaper publication and radio broadcast. These provisions are similar to those of the existing State program, and should help foster meaningful participation by Indian tribes.

EPA received comments objecting to the requirement for individual notice in the Oklahoma program also. For the reasons set out in section 2.A. above, EPA has decided to retain the notice requirement for the final rule. An industry commenter also objected to the 45-day notice for comment on draft permits for Class I and III wells, saying that Oklahoma and other States only require a 15-day notice. In fact, the 15-day notice period applies only to Class II wells. Oklahoma requires a 45-day comment period for Class I and III permits. EPA believes that the potential complexity of Class I and III well permits and the broader public interest in them justify the longer period.

C. Plugging and Abandonment (§ 147.3102, § 147.3104, § 147.3105 and § 147.3108)

EPA has adopted the Oklahoma approach for plugging and abandonment and associated reporting. The generic Federal standards do not specify detailed plugging requirements, but set forth the basic principle that plugging shall prevent movement of fluids either into or between underground sources of drinking water (40 CFR 146.10). However, the Class II wells in Oklahoma all have similar construction and are completed into a few similarly characterized strata, and EPA believes it

is expedient to prescribe detailed plugging requirements in the regulations. This is consistent with the State program and the EPA-regulated program in Osage County, thereby maintaining consistency within Oklahoma. The similarity of the wells allows EPA to set financial responsibility requirements without detailed plugging plans. The abbreviated individual plugging and abandonment plans will not be required of Class II operators until the operator submits a notice of abandonment to the EPA. The notice of abandonment is due 45 days before planned abandonment.

The setting of cement plugs is detailed in this proposal. Cement plugs are required to seal and isolate the injection zone and the lowermost USDW. The space between the cement plugs must be filled with mud, and a cement plug is required at the surface. The cement plugs so placed will prevent any movement of fluid into or between USDWs. The plugging requirements will be made a permit condition in any permit. Finally, the 45-day notice of abandonment should allow sufficient time for EPA's review and evaluation because the detailed plugging specifications in the regulations restrict the amount of variation in the types of plans EPA will review.

The Oklahoma Corporation Commission (OCC) made two comments on the plugging provisions. It suggested that EPA emphasize that the specifications are minimums which can be increased if necessary, particularly the size of the cement plug. EPA has adopted this suggestion and inserted the phrase "at least" in several places in the plugging section. The OCC also recommended adding its definition of mud to the provision. EPA has adopted this suggestion also, and revised the final rule accordingly.

D. Fluid Seals (§ 147.3103)

Fluid seals will not be allowed as alternatives to packers for Class I wells on these Indian lands. This prohibition is already a requirement in the Oklahoma State program and is more stringent than the minimum Federal standards. Currently, there is only one Class I well on Indian lands in Oklahoma.

E. Mechanical Integrity Tests (MIT) (§ 147.3107)

Any monitoring of annulus pressure pursuant to § 146.8(b)(1) must be preceded by a pressure test. A positive gauge pressure must be maintained upon an annulus filled with liquid during such annulus pressure monitoring. Experience in Oklahoma and elsewhere shows that unless a positive pressure is continuously maintained on the annulus, the continued integrity of the well cannot be assumed from monitoring. Both initial pressure test and continued positive gauge pressure are current Agency guidance.

In addition, any pressure test conducted pursuant to § 146.8(b)(2) must be performed with a pressure on the casing/tubing annulus of at least 200 pounds per square inch (psi) unless otherwise specified by the Director. When such tests are conducted during well operation, a differential between the injection and annulus pressure of at least 100 psi must be maintained throughout the tubing length.

For monitoring of the relationship of injection pressure and injection flow rate in enhanced recovery wells pursuant to § 146.8(b)(3), the monitoring must be preceded by a pressure test conducted not more than 90 days prior to commencement of the monitoring. A pressure test prior to monitoring for the flow rate-volume relationship is consistent with current Agency guidance and with practice in the Osage UIC program.

A trade association made comments similar to those on the Navajo program, supporting the use of radioactive tracer surveys for demonstrations of both parts of the mechanical integrity definition in § 146.8(a). As discussed above, the approval of radioactive tracer surveys for the entire UIC program obviates need for provisions concerning radioactive tracer surveys in these Indian land programs. The trade association also said that pressure on the annulus would be destructive to many wells and that it is not necessary as a new study demonstrates that monitoring without pressure is technically sound. An owner or operator now has the option of conducting a radioactive tracer if he believes that a pressure test would be harmful.

Finally, existing Class I wells must have a valid mechanical integrity test conducted within 90 days of the date of the required application for a permit. EPA believes that a test should be run as close to the date of the application as possible. The operator must give the Director at least seven days prior-notice of the test so that an observer can be present. The seven-day period is shorter than the period currently in the Federal generic standards because there is only one existing Class I well on the Indian lands covered by this rule, which will not present a scheduling problem.

F. Other Comments on the Oklahoma Program

Some of the comments did not address any of the specific provisions. One industry commenter supported the proposal because he believed that placing his Class I well under Federal control will resolve reporting, monitoring and testing requirements and facilitate transfer of primary enforcement responsibility to the Osage Council, if he should apply for it.

A Tribe said that the program is long over-due and should significantly reduce further ground water contamination. The tribe also wanted to know whether EPA, BLM, or BIA would implement the program. It should be clear that although BIA and BLM have some jurisdiction over injection wells, under the SDWA it is EPA's responsibility to implement the UIC program protecting underground sources of drinking water. Memoranda of Agreement between the three Agencies should reduce conflicts and inconsistencies.

Another tribe asserted that it retains inherent authority to regulate activities affecting the natural resources in the tribal management area, and suggested that EPA insert a warning that the regulations may be superseded by provisions of tribal law. While Indian tribes may have authority to regulate injection activities, it must be exercised through the statutory framework of the Safe Drinking Water Act. Tribes may now apply for and receive primary enforcement responsibility for UIC and Public Water System programs. Procedures to do so will be promulgated shortly.

The same tribe asked EPA to insert a provision requiring delivery to the Tribe of documents submitted to EPA and BIA. These regulations will assure that the Tribe receives notice of intent to apply for a permit, draft permits, and any other information sent to affected States under 40 CFR 124.10(c). The Tribe also requested addition of a section directing local BIA and EPA officials to release information such as the amount of injection activities upon request or subpoena. It appears that the Tribe wishes to use this information to learn more about oil and gas production and mining on its reservation. Most of the information used in the UIC program is available to the public, and the Tribe can obtain it without a subpoena or a new regulatory directive. Of course, EPA cannot direct disposal of BIA documents.

VII. Office of Management and Budget Review

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a

Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, nor will it have a significant effect on competition, costs, or prices. For the most part this proposal would extend to a relatively small number of wells the Federal regulations already judged not to be major even when applied to all injection wells in the country.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The original proposal for the generic Federal program concluded that the Federal program would not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of a program basically consisting of the Federal requirements to a limited number of owners and operators, of whom only some are "small entities" does not change the original assessment. Therefore, I certify that this rule will not have significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Date: September 29, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

2. Part 147 is amended by adding a new Subpart HHH as follows:

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

Sec.

147.3000 EPA-administered program.
147.3001 Definition.
147.3002 Public notice of permit actions.
147.3003 Aquifer exemptions.
147.3004 Duration of rule authorization for existing Class I and III wells.
147.3005 Radioactive waste injection wells.
147.3006 Injection pressure for existing Class II wells authorized by rule.
147.3007 Application for a permit.
147.3008 Criteria for aquifer exemptions.
147.3009 Area of review.
147.3010 Mechanical integrity tests.
147.3011 Plugging and abandonment of Class III wells.
147.3012 Construction requirements for Class I wells.
147.3013 Information to be considered for Class I wells.
147.3014 Construction requirements for Class III wells.
147.3015 Information to be considered for Class III wells.
147.3016 Criteria and standards applicable to Class V wells.
Appendix A to Subpart HHH—Exempted Aquifers in New Mexico.

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands of the Navajo, the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on these lands is November 25, 1988.

§ 147.3001 Definition.

Area of review. For the purposes of this subpart, area of review means the area surrounding an injection well or project area described according to the criteria set forth in § 147.3009 of this subpart.

§ 147.3002 Public notice of permit actions.

An applicant shall give public notice of his intention to apply for a permit as follows:

(a) Prior to submitting an application to the Director, the applicant shall give notice to each landowner, tenant, and operator of a producing lease within one-half mile of the well and to the affected Tribal Government. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities including well location, name and depth of the injection zone, maximum injection pressure and volume, and source and description of the fluid to be injected;

(3) Name, address, and phone number of the EPA contact person; and

(4) A statement that opportunity to comment will be announced to the public after EPA prepares a draft permit.

(b) In addition to the requirements of § 144.31(e) of this chapter, a permit applicant shall submit a description of the way the notice was given and the names and addresses of those to whom it was given.

(c) Upon written request and supporting documentation, the Director may waive the requirement in paragraph (a) of this section to give individual notice of intent to apply for permits in an area where it would be impractical. However, notice to the affected Tribal government shall not be waived.

(d) The Director shall also provide to the affected Tribal government all notices given to State governments under § 124.10(c) of this chapter.

§ 147.3003 Aquifer exemptions.

(a) *Aquifer exemptions in connection with Class II wells.* In accordance with § 144.7(b) and § 146.4 of this chapter, the portions of authorized injection zones into which existing Class II wells are currently injecting which are described in Appendix A are hereby exempted. The exempted aquifers are defined by a one-quarter mile radius from the existing injection well. The exemption includes the intended injection zone only and is solely for the purpose of Class II injection.

(b) *Class III wells.* In addition to the requirements of § 144.7(c)(1) of this chapter, an applicant for a uranium mining permit which necessitates an aquifer exemption shall submit a plugging and abandonment plan containing an aquifer cleanup plan, acceptable to the Director, describing the methods or techniques that will be used to meet the standards of § 147.3011. The cleanup plan shall include an analysis of pre-injection water quality for the constituents required by the Director. The Director shall consider the cleanup plan in addition to the other information required for permit applications under §§ 144.31(e) and 146.34 of this chapter.

§ 147.3004 Duration of rule authorization for existing Class I and III wells.

Notwithstanding § 144.21(a)(3)(i)(B) of this chapter, authorization by rule for existing Class I and III wells will expire 90 days after the effective date of this UIC program unless a complete permit

application has been submitted to the Director.

§ 147.3005 Radioactive waste injection wells.

Notwithstanding §§ 144.24 and 146.51(b) of this chapter, owners and operators of wells used to dispose of radioactive waste (as defined in 10 CFR Part 20, Appendix B, Table II, but not including high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191) shall comply with the permitting requirements pertaining to Class I wells in Parts 124, 144 and 146 of this chapter, as modified and supplemented by this subpart.

§ 147.3006 Injection pressure for existing Class II wells authorized by rule.

(a) *Rule-authorized Class II saltwater disposal wells.* In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall, except during well stimulation, use an injection pressure measured at the wellhead that is not greater than the pressure calculated by using the following formula: Pm = 0.2d

where:

Pm = injection pressure at the wellhead in pounds per square inch

d = depth in feet to the top of the injection zone.

Owners and operators shall comply with this requirement no later than one year after the effective date of this program.

(b) *Rule-authorized Class II enhanced recovery and hydrocarbon storage wells.* (1) In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, owners and operators shall use an injection pressure no greater than the pressure established by the Director for the field or formation in which the well is located. The Director shall establish such maximum pressure after notice (including notice to the affected Tribe), opportunity for comment, and opportunity for public hearing according to the provisions of Part 124, Subpart A, of this chapter, and shall inform owners and operators and the affected Tribe in writing of the applicable maximum pressure; or

(2) An owner or operator may inject at a pressure greater than that specified in paragraph (b)(1) of this section for the field or formation in which he is operating after demonstrating in writing to the satisfaction of the Director that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request after notice (including notice to the affected Tribe), opportunity for comment and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter.

(3) Prior to the time that the Director establishes rules for maximum injection pressure under paragraph (b)(1) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Director which defines the fracture pressure of the formation in which injection is taking place. A single submission may be made on behalf of two or more operators conducting operations in the same field and formation, if the Director approves. The data shall be submitted to the Director within one year of the effective date of this program.

§ 147.3007 Application for a permit.

(a) Notwithstanding the requirements of § 144.31(c)(1) of this chapter, the owner or operator of an existing Class I or III well shall submit a complete permit application no later than 90 days after the effective date of the program.

(b) The topographic map (or other map if a topographic map is unavailable) required by § 144.31(e)(7) of this chapter, shall extend two miles from Class II wells, and 2½ miles from Class I and III wells. These maps will show all the information listed in paragraph 144.31(e)(7) within ½ mile for Class II wells and 2½ miles for Class I and III wells.

§ 147.3008 Criteria for aquifer exemptions.

The aquifer exemption criterion in § 146.4(c) of this chapter shall not be available for this program.

§ 147.3009 Area of review.

The area of review shall be defined as follows:

(a) *Class II wells.* The area of review for Class II permits and area permits shall be defined by a fixed radius as described in § 146.6(b) (1) and (2) of this chapter except that the radius shall be one-half mile.

(b) *Class I and III wells.* The area of review for Class I and III wells are well fields which may be either:

(1) An area defined by a radius two and one-half miles from the well or well field; or

(2) An area one-quarter mile from the well or well field where the well field production at the times exceeds injection to produce a net withdrawal; or

(3) A suitable distance, not less than one-quarter mile, proposed by the owner or operator and approved by the Director based upon a mathematical calculation such as that found in § 146.6(a)(2) of this chapter.

§§ 147.3010 Mechanical integrity tests.

The monitoring of annulus pressure listed in 146.8(b)(1) of this chapter will only be acceptable if preceded by a pressure test, using liquid or gas that clearly demonstrates that mechanical integrity exists at the time of the pressure test.

§ 147.3011 Plugging and abandonment of Class III wells.

To meet the requirements of paragraph 146.10 (d) of this chapter, owners and operators of Class III uranium projects underlying or in aquifers containing up to 5,000 mg/l TDS which have been exempted under § 146.4 of this chapter shall:

(a) Include in the required plugging and abandonment plan a plan for aquifer clean-up and monitoring which demonstrates adequate protection of surrounding USDWs.

(1) The Director shall include in each such permit for a Class III uranium project the concentrations of contaminants to which aquifers must be cleaned up in order to protect surrounding USDWs.

(2) The concentrations will be set as close as is feasible to the original conditions.

(b) When requesting permission to plug a well, owners and operators shall submit for the Director's approval a schedule for the proposed aquifer cleanup, in addition to the information required by § 146.34(c).

(c) Cleanup and monitoring shall be continued until the owner or operator certifies that no constituent listed in the permit exceeds the concentrations required by the permit, and the Director notifies the permittee in writing that cleanup activity may be terminated.

§ 147.3012 Construction requirements for Class I wells.

In addition to the cementing requirement of § 146.12(b) of this chapter, owners and operators of Class I wells shall, through circulation, cement all casing to the surface.

§ 147.3013 Information to be considered for Class I wells.

(a) In addition to the information listed in § 146.14(a) of this chapter, the Director shall consider the following prior to issuing any Class I permit:

(1) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid; and

(2) Methods to be used for sampling, and for measurement and calculation of flow.

(b) In addition to the information listed in § 146.14(b) of this chapter, the Director shall consider any information required under § 146.14(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3014 Construction requirements for Class III wells.

(a) In addition to the requirements of § 146.32(c)(3) of this chapter, radiological characteristics of the formation fluids shall be provided to the Director.

(b) In addition to the requirements of § 146.32(e) of this chapter, the Director may require monitoring wells to be completed into USDWs below the injection zone if those USDWs may be affected by mining operations.

§ 147.3015 Information to be considered for Class III wells.

(a) In addition to the requirements of § 146.34(a) of this chapter, the following information shall be considered by the Director:

(1) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing and coring program.

(2) Depth to the proposed injection zone, and a chemical, physical and radiological analysis of the ground water in the proposed injection zone sufficient to define pre-injection water quality as required for aquifer cleanup by § 147.3011 of this subpart.

(3) An aquifer cleanup plan if required by § 147.3003(b) of this subpart.

(4) Any additional information that may be necessary to demonstrate that cleanup will reduce the level of contaminants in the surrounding USDWs as close as feasible to the original conditions.

(b) In addition to the requirements of § 146.34(b) of this chapter, the Director shall consider any information required under § 146.34(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3016 Criteria and standards applicable to Class V wells.

In addition to the criteria and standards applicable to Class V wells set forth in Subpart F of Part 146 of this chapter, owners and operators of wells that do not fall within the Class IV category but that are used to dispose of radioactive wastes (as defined in 10 CFR Part 20, Appendix B, Table II, Column 2, but not including high level and transuranic wastes and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements applicable to Class I injection wells in 40 CFR Parts 124, 144 and 146 as supplemented by this subpart.

Appendix A to Subpart HHH—Exempted Aquifers in New Mexico

The areas described by a one-quarter mile radius around the following Class II wells in the listed formations are exempted for the purpose of Class II injection.

Sec.					Well No.
Arco Oil & Gas Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
SE/NE	5	T30N R16W	1650'FNL	330'FEL	134
NW/NW	30	T31N R16W	660'FNL	703'FWL	8
SE/SW	28	T31N R16W	790'FSL	2150'FWL	167
NW/SE	33	T31N R16W	1710'FSL	2310'FEL	199
SE/NW	35	T31N R16W	2105'FNL	2105'FWL	196
NW/NW	4	T30N R16W	455'FNL	4435'FEL	219
NW/SW	33	T31N R16W	1980'FSL	386'FWL	65
NW/SE	27	T31N R16W	1980'FSL	2080'FEL	164
SE/SE	30	T31N R16W	660'FSL	660'FEL	5
NW/NW	34	T31N R16W	730'FNL	515'FWL	180
NW/NE	34	T31N R16W	813'FNL	2036'FEL	182
NW/NE	2	T30N R16W	720'FNL	2040'FEL	229
NW/NW	29	T31N R16W	660'FNL	660'FWL	24
NW/SW	13	T31N R17W	1975'FSL	670'FWL	77
NW/SE	29	T31N R16W	1980'FSL	1980'FEL	22
SE/SW	27	T31N R16W	660'FSL	1980'FWL	171
NW/SW	35	T31N R16W	1980'FSL	660'FWL	205
SE/NW	30	T31N R16W	1980'FNL	2061'FWL	7
NW/NE	31	T31N R16W	660'FNL	1980'FEL	17
NW/NE	4	T30N R16W	330'FNL	2160'FEL	221
NW/NE	29	T31N R16W	660'FNL	1980'FEL	26
SE/NE	34	T31N R16W	1990'FNL	645'FEL	194
SE/SE	31	T31N R16W	640'FSL	660'FEL	27
NE/SW	14	T31N R17W	2250'FSL	2630'FWL	94
NE/NW	14	T31N R17W	625'FNL	1995'FWL	69
SE/NW	10	T30N R16W	1900'FNL	2080'FWL	271
SE/SE	29	T31N R16W	560'FSL		21
SE/NE	30	T31N R16W	1980'FNL	660'FEL	10
SE/NW	29	T31N R16W	2080'FNL	1980'FWL	23
NW/SE	25	T31N R17W	1980'FSL	1980'FEL	122
SE/SW	32	T31N R16W	660'FSL	1980'FWL	14
NW/SW	30	T31N R16W	2021'FSL	742'FWL	19
SE/SW	13	T31N R17W	660'FSL	1980'FWL	82
NW/NW	27	T31N R16W	520'FNL	660'FWL	150
SE/SE	28	T31N R16W	660'FSL	660'FEL	169
NW/SW	29	T31N R16W	1980'FSL	660'FWL	11
SE/NW	34	T31N R16W	2310'FNL	1650'FWL	192
SE/NW	29	T31N R16W	660'FSL	1980'FWL	12
NW/SW	27	T31N R16W	1650'FSL	330'FWL	162
NE/SE	23	T31N R17W	1880'FSL	340'FEL	96
NW/SW	24	T31N R17W	2050'FSL	990'FWL	97
SE/NW	4	T30N R16W	2060'FNL	1710'FWL	232
NW/NW	31	T31N R16W	620'FNL	701'FWL	30
NW/SE	35	T31N R16W	1980'FSL	1980'FEL	207

	Sec.				Well No.
SE/NE	32	T31N R16W	1980'FNL	417'FEL	20
NE/NW	28	T31N R16W	1980'FNL	1980'FEL	152
NE/NW	34	T31N R16W	2140'FSL	735'FWL	201
SE/NW	3	T30N R16W	2310'FNL	1640'FWL	236
SE/SW	34	T31N R16W	660'FSL	1980'FWL	213
NW/NE	30	T31N R16W	660'FNL	1980'FFL	9
SE/SW	26	T31N R16W	660'FSL	1980'FWL	175
NW/SE	30	T31N R16W	1980'FSL	1980'FEL	6
SE/NW	9	T30N R16W	1650'FNL	2131'FWL	264
NW/SW	4	T30N R16W	2310'FSL	4390'FEL	242
NW/SW	2	T30N R16W	1980'FSL	660'FWL	250
NW/NW	33	T31N R16W	660'FNL	386'FWL	66
NE/NE	15	T31N R17W	660'FNL	660'FEL	67
NW/NE	33	T31N R16W	660'FNL	1980'FEL	178
NW/SE	24	T31N R17W	1875'FSL	1900'FEL	99
NW/NE	28	T31N R16W	660'FNL	1980'FEL	148
NW/NW	19	T31N R16W	680'FNL	682'FWL	89
NW/SE	4	T30N R16W	1820'FSL	2130'FEL	244
SE/SW	20	T31N R16W	660'FSL	1980'FWL	115
NW/NE	25	T31N R17W	660'FNL	1980'FEL	118
SE/SW	4	T30N R16W	660'FSL	3300'FEL	253
NW/SW	19	T31N R16W	1980'FSL	706'FWL	101
NW/SE	32	T31N R16W	1950'FSL	1980'FEL	22
NW/NW	35	T31N R16W	605'FNL	690'FWL	184
SE/NE	29	T31N R16W	1980'FNL	417'FEL	25
SE/NW	19	T31N R16W	1980'FNL	2023'FWL	95
NW/NW	32	T31N R16W	660'FNL	660'FWL	4
SE/SW	24	T31N R17W	660'FSL	3300'FEL	107
SE/NE	28	T31N R16W	2105'FNL	940'FEL	154
NW/NE	35	T31N R16W	610'FNL	2000'FEL	186
SE/SW	5	T31N R16W	990'FSL	2310'FWL	139
NW/SE	28	T31N R16W	1980'FSL	1980'FEL	160
SE/SE	33	T31N R16W	330'FSL	990'FEL	211
NW/NE	5	T30N R16W	330'FNL	1650'FEL	128
SE/NW	27	T31N R16W	1900'FNL	2050'FWL	156
SE/SW	35	T31N R16W	660'FSL	1980'FWL	217
NW/NW	10	T30N R16W	526'FNL	330'FWL	265
NE/SW	21	T31N R16W	1880'FSL	1980'FWL	143
NW/NE	24	T31N R17W	409'FNL	1914'FEL	87
NW/SW	32	T31N R16W	1980'FSL	660'FWL	15
SE/SE	34	T31N R16W	960'FSL	910'FEL	215
SW/SE	21	T31N R16W	820'FSL	1820'FEL	145
SE/SE	27	T31N R16W	610'FSL	640'FEL	173
NW/SW	3	T30N R16W	1920'FSL	350'FWL	246
SE/SW	19	T31N R16W	601'FSL	2002'FWL	111
SW/SE	14	T31N R17W	330'FSL	1900'FEL	79
NW/NW	27	T31N R16W	520'FNL	660'FWL	150
SE/NW	31	T31N R16W	1724'FNL	2067'FWL	29
NW/NE	32	T31N R16W	660'FNL	1980'FEL	13
SE/NE	24	T31N R17W	1998'FNL	702'FEL	93
NW/NW	5	T30N R16W	660'FNL	660'FWL	126
NW/SW	28	T31N R16W	1740'FSL	590'FWL	158
SE/NE	31	T31N R16W	1980'FNL	660'FEL	16
NW/NW	24	T31N R17W	660'FNL	760'FWL	85
Energy Reserve Backup Inc.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
SE/SE	5	T31N R17W	660'FSL	660'FEL	4
NE/SW	10	T30N R16W	1970'FSL	2210'FWL	31
SE/NW	11	T30N R16W	2090'FNL	2190'FWl	29
SE/SE	10	T30N R16W	700'FSL	500'FEL	37
Solar Petroelum Inc.—Operator/Horseshoe—Field/Gallup—Formation					
SW/SE	11	T31N R17W	736'FSL	2045'FEL	205
SE/NE	9	T31N R17W	1980'FNL	660'FEL	122
NW/SE	4	T31N R17W	1980'FSL	1980'FFL	127
NE/NE	10	T31N R17W	660'FNL	660'FEL	136
SE/SW	4	T31N R17W	660'FSL	1980'FWL	125
SW/NW	11	T31N R17W	2300'FNL	660'FWL	206
NW/SW	4	T31N R17W	1980'FSL	660'FWL	103
SE/NW	4	T31N R17W	1989'FNL	1980'FWL	128
NW/NW	4	T31N R17W	660'FNL	660'FWL	101
SW/NE	10	T31N R17W	1980'FNL	1980'FEL	117
SW/NW	10	T31N R17W	1980'FNL	660'FWL	108
SW/SW	10	T31N R17W	660'FSL	660'FWL	114
SW/SE	3	T31N R17W	330'FSL	2310'FEL	143
SE/NE	5	T31N R17W	1980'FNL	660'FEL	302
NE/NE	5	T31N R17W	1950'FNL	1050'FEL	307
SE/SE	9	T31N R17W	990'FSL	850'FEL	140
NE/NW	10	T31N R17W	660'FNL	1980'FWL	118
SW/SW	11	T31N R17W	660'FSL	660'FWL	204

	Sec.				Well No.
NW/SE	9	T31N R17W	1980'FSL	1980'FEL	115
SW/SE	10	T31N R17W	990'FSL	1980'FEL	144
NW/NE	9	T31N R17W	660'FNL	1980'FEL	123
NE/SW	10	T31N R17W	1980'FSL	1980'FWL	109
NE/SW	11	T31N R17W	1980'FSL	1980'FWL	203
SE/NW	9	T31N R17W	1980'FNL	1980'FWL	134
NW/SW	3	T31N R17W	1980'FSL	660'FWL	132
SW/SW	3	T31N R17W	560'FSL	660'FWL	110
NW/NW	9	T31N R16W	660'FNL	660'FWL	133
SE/SE	4	T31N R17W	660'FSL	660'FEL	124
WTR Oil Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
NE/SW	33	T32N R17W	1980'FSL	1989'FWL	2
Arco Oil & Gas Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NW	7	T31N R16W	898'FNL	500'FWL	2
SW/NE	17	T31N R16W	1673'FNL	1789'FEL	21
NW/SE	17	T31N R16W	1890'FSL	2150'FEL	23
SW/NE	7	T31N R16W	2310'FNL	2310'FEL	6
NE/SW	8	T31N R16W	1650'FSL	1650'FWL	12
NE/NW	17	T31N R16W	660'FNL	2030'FWL	18
NE/NE	18	T31N R16W	360'FNL	855'FEL	16
SE/SW	7	T31N R16W	716'FSL	2185'FWL	13
SE/SE	17	T31N R16W	660'FSL	660'FEL	26
NE/SW	17	T31N R16W	2040'FSL	2070'FWL	22
SW/SW	6	T31N R16W	330'FSL	330'FWL	1
SW/NW	17	T31N R16W	2073'FNL	641'FWL	19
NW/SW	17	T31N R16W	1967'FSL	981'FWL	8
James P. Woosley—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NE	20	T32N R17W	330'FNL	2310'FEL	13
SW/SW	27	T32N R17W	660'FSL	990'FWL	1
SW/NW	17	T32N R17W	2310'FWL	330'FWL	4
SW/NW	27	T32N R17W	260'FWL	1360'FNL	11
NE/SW	27	T32N R17W	1980'FSL	1980'FWL	6
NE/SE	18	T32N R17W	2474'FSL	133'FEL	18
SW/SE	27	T32N R17W	625'FNL	2000'FEL	3
NE/SE	28	T32N R17W	1980'FSL	330'FEL	12
Solar Petroleum Inc.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
SE/NW	1	T31N R17W	1980'FNL	1980'FWL	216
NW/NE	2	T31N R17W	805'FNL	940'FEL	215
SE/NE	2	T31N R17W	1980'FNL	660'FEL	218
NW/SW	1	T31N R17W	2310'FSL	990'FNL	223
SE/NE	12	T31N R17W	1820'FNL	500'FEL	217
WTR Oil Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NW	35	T32N R17W	810'FNL	510'FWL	11
SE/SE	35	T32N R17W	660'FSL	660'FEL	6
SE/NE	34	T32N R17W	775'FEL	1980'FNL	8
SE/NW	35	T32N R16W	1980'FNL	1980'FWL	9
NW/SE	35	T32N R17W	1980'FSL	1980'FEL	7
Chaco Oil Co.—Operator/Red Mtn Meseverde—Field/Menefee—Formation					
NE/NE	29	T20N R9W	395'FNL	1265'FEL	6
SE/SW	20	T20N R9W	442'FSL	2430'FWL	17
Geo Engineering Inc.—Operator/Red Mtn Meseverde—Field/Menefee—Formation					
NW/NE	29	T20N R9W	160'FNL	2135'FEL	35
NE/NE	29	T20N R9W	225'FNL	1265'FEL	7
SE/NW	29	T20N R9W	1344'FNL	2555'FWL	20
NW/NE	29	T20N R9W	615'FNL	1920'FEL	5
NE/NW	29	T20N R9W	834'FNL	2113'FWL	21
SW/SE	20	T20N R9W	265'FSL	2150'FEL	36
NE/NE	29	T20N R9W	5'FNL	1130'FEL	8
SE/SE	20	T20N R9W	450'FSL	1145'FEL	24
SE/SE	20	T20N R9W	990'FSL	1280'FEL	10
NW/NE	29	T20N R9W	1115'FNL	2325'FEL	22
SE/SE	20	T20N R9W	1085'FSL	860'FEL	12
Tesoro Petroleum Co.—Operator/S. Hospah Lower Sand—Field/Hospah—Formation					
NW/SE	6	T17N R8W	2310'FSL	2310'FEL	28
SW/SE	6	T17N R8W	990'FSL	2310'FFL	34
SW/SW	6	T17N R8W	5'FSL	20'FWL	18
SE/SW	6	T17N R8W	5'FSL	2635'FWL	20

3. Part 147 is amended by adding a new Subpart III as follows:

Subpart III—Lands of Certain Oklahoma Indian Tribes

Sec.
147.3100 EPA-administered program.
147.3101 Public notice of permit actions.
147.3102 Plugging and abandonment plans.
147.3103 Fluid seals.
147.3104 Notice of abandonment.
147.3105 Plugging and abandonment report.
147.3106 Area of review.
147.3107 Mechanical integrity.
147.3108 Plugging Class I, II, and III wells.
147.3109 Timing of mechanical integrity test.

Subpart III—Lands of Certain Oklahoma Indian Tribes

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR Part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes consists of the requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for all wells on Indian lands except Class II wells on the Osage Mineral Reserve and Class II wells on the lands of the Five Civilized Tribes is November 25, 1988.

§ 147.3101 Public notice of permit actions.

(a) In addition to the notice requirements of § 124.10 of this chapter, the Director shall provide to the affected Tribal government all notices given to an affected State government under § 124.10(c) of this chapter.

(b) *Class I and III wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class I and III wells shall notify the affected Tribal government prior to submitting an application for a permit, shall publish such notice in at least two newspapers of general circulation in the area of the proposed well, and shall broadcast notice over at least one local radio station.

(2) The Director shall publish a notice of availability of a draft permit in at least two newspapers of general circulation in the area of the proposed well, and broadcast notice over at least one local radio station. The public notice shall allow at least 45 days for public comment.

(c) *Class II wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class II wells shall give notice of application for a permit to the affected Tribal government prior to submitting the application to the Director.

(2) In addition to the public notice required for each action listed in § 124.10(a) of this chapter, the Director shall also publish notice in a daily or weekly newspaper of general circulation in the affected area for actions concerning Class II wells.

§ 147.3102 Plugging and abandonment plans.

In lieu of the requirements of § 144.28(c)(1) and (2)(i)–(iii) of this chapter, owners and operators of Class II wells shall comply with the plugging and abandonment provisions of § 147.3108 of this subpart.

§ 147.3103 Fluid seals.

Notwithstanding § 144.28(f)(2) and § 146.12(c) of this chapter, owners and operators shall not use a fluid seal as an alternative to a packer.

§ 147.3104 Notice of abandonment.

(a) In addition to the notice required by § 144.28(j)(2) of this chapter, the owner or operator shall at the same time submit plugging information in conformance with § 147.3108 of this subpart including:

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(b) In addition to the permit conditions specified in §§ 144.51 and 144.52 of this chapter, each owner and operator shall submit and each permit shall contain the following information (in conformance with 146.3108 of this subpart):

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

§ 147.3105 Plugging and abandonment report.

(a) In lieu of the time periods for submitting a plugging report in § 144.28(k) of this chapter, owners and operators of Class I and III wells shall submit the report within 15 days of plugging the well and owners or operators of Class II wells within 30 days of plugging, or at the time of the next required operational report (whichever is less.) If the required operational report is due less than 15 days following completion of plugging, then the plugging report shall be submitted within 30 days for Class II wells and 15 days for Class I and III wells.

(b) In addition to the requirement of § 144.28(k)(1) of this chapter, owners and operators of Class II wells shall include a statement that the well was plugged in accordance with § 146.10 of this chapter and § 147.3109 of this subpart, and, if the actual plugging differed, specify the actual procedures used.

(c) The schedule upon which reports of plugging must be submitted are changed from those in § 144.51(o) to those specified in paragraph (a) of this section.

§ 147.3106 Area of review.

(a) When determining the area of review under § 146.6(b) of this chapter, the fixed radius shall be no less than one mile for Class I wells and one-half mile for Class II and III wells. In the case of an application for an area permit, determination of the area of review under § 146.6(b) shall be a fixed width of not less than one mile for the circumscribing area of Class I projects and one-half mile for the circumscribing area of Class II and III projects.

(b) However, in lieu of § 146.6(c) of this chapter, if the area of review is determined by a mathematical model pursuant to paragraph § 146.6(a) of this chapter, the permissible radius is the result of such calculation even if it is less than one mile for Class I wells and one-half for Class II and III wells.

§ 147.3107 Mechanical integrity.

(a) Monitoring of annulus pressure conducted pursuant to § 146.8(b)(1) shall be preceded by an initial pressure test. A positive gauge pressure on the casing/tubing annulus (filled with liquid) shall be maintained continuously. The pressure shall be monitored monthly.

(b) Pressure tests conducted pursuant to § 146.8(b)(2) of this chapter shall be performed with a pressure on the casing/tubing annulus of at least 200 p.s.i. unless otherwise specified by the Director. In addition, pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 p.s.i. throughout the tubing length.

(c) Monitoring of enhanced recovery wells conducted pursuant to § 146.8(b)(3), must be preceded by an initial pressure test that was conducted no more than 90 days prior to the commencement of monitoring.

§ 147.3108 Plugging Class I, II, and III wells.

In addition to the requirements of § 146.10 of this chapter, owners and operators shall comply with the following when plugging a well:

(a) For Class I and III wells:

(1) The well shall be filled with mud from the bottom of the well to a point one hundred (100) feet below the top of the highest disposal or injection zone and then with a cement plug from there to at least one hundred (100) feet above the top of the disposal or injection zone.

(2) A cement plug shall also be set from a point at least fifty (50) feet below the shoe of the surface casing to a point at least five (5) feet above the top of the lowest USDW.

(3) A final cement plug shall extend from a point at least thirty feet below the ground surface to a point five (5) feet below the ground surface.

(4) All intervals between plugs shall be filled with mud.

(5) The top plug shall clearly show by permanent markings inscribed in the cement or on a steel plate embedded in the cement the well permit number and date of plugging.

(b) For Class II wells:

(1) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Director.

(2) If surface casing is adequately set and cemented through all USDWs (set to at least 50 feet below the base of the USDW), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing; or

(3) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point at least 50 feet below the base of the USDW to a point at least 50 feet above the shoe of the surface casing, and any additional plugs as required by the Director.

(4) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(5) Except as provided in sub-paragraph (b)(6) of this section, each producing or receiving formation shall be sealed off with at least a 50-foot cement plug placed at the base of the formation and at least a 50-foot cement plug placed at the top of the formation.

(6) The requirement in sub-paragraph (b)(5) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with at least 10 feet of cement set at the top of the producing formation may be used.

(7) When specified by the Director, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(8) All intervals between cement plugs in the well bore must be filled with mud.

(c) For the purposes of this section mud shall be defined as: mud of not less than thirty-six (36) viscosity (API Full Funnel Method) and a weight of not less than nine (9) pounds per gallon.

§ 147.3109 Timing of mechanical integrity test.

The demonstrations of mechanical integrity required bv § 146.14(b)(2) of this chapter prior to approval for the operation of a Class I well shall, for an existing well, be conducted no more than 90 days prior to application for the permit and the results included in the permit application. The owner or operator shall notify the Director at least seven days in advance of the time and date of the test so that EPA observers may be present.

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federal register

Tuesday
October 25, 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Action on Amendments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Action on Amendments

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

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing his decision on proposed amendments submitted by the State of Illinois as modifications to its permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments, which the Director is largely approving, consist of numerous revisions to the regulations of the Illinois Department of Mines and Minerals (IDMM). The amendments are intended to achieve consistency with the corresponding Federal regulations and to incorporate additional flexibility provided by the revised Federal rules.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Reasons for Amendments
III. Discussion of Amendments
IV. Director's Findings
V. Disposition of Agency and Public Comments
VI. Director's Decision
VII. Additional Determinations

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register** (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15 and 913.16.

II. Reasons for Amendments

Federal Regulatory Reform

Between 1981 and 1983, OSMRE extensively revised the Federal regulations implementing SMCRA. While most of these revisions provided States with additional flexibility in meeting the requirements of SMCRA, others added new requirements. By letter dated May 21, 1985 (Administrative Record No. IL-1015), OSMRE informed Illinois of the specific State regulations in need of revision to be no less effective than the revised Federal regulations. This amendment package addresses these requirements.

Remand Order

On July 29, 1982, the Illinois South Project, Inc. (ISP) and nine other organizations challenged the June 1, 1982, decision of the Secretary of the Interior approving the Illinois program. On November 30, 1983, the U.S. District Court for the Central District of Illinois, at the request of the Secretary, remanded the case to the Secretary to review the issues raised by the plaintiffs (*Illinois South Project* v. *Watt*, Civil Action No. 82-2229). As a result of that review, the Secretary determined that the Illinois program was not fully consistent with Federal requirements. Consequently, by notice published in the April 5, 1984, **Federal Register**, the Director of OSMRE, pursuant to 30 CFR 732.17, notified Illinois of those program provisions in need of amendment (49 FR 13494). These requirements were codified at 30 CFR 913.16 (a) through (f). By amendment approved September 28, 1984 (40 FR 38264), Illinois satisfied the requirements of 30 CFR 913.16(b). This package contains provisions addressing the remaining requirements.

III. Discussion of Amendments

By letter dated March 28, 1986 (Administrative Record No. IL-1028), for the reasons discussed above, Illinois proposed extensive revisions to the regulations contained in its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the **Federal Register** on May 9, 1986 (51 FR 23858).

By letter dated July 22, 1986 (Administrative Record No. IL-1038), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79-1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II*. Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL-1029A). OSMRE announced the resubmission in the **Federal Register** on June 26, 1987, and reopened the public comment period (52 FR 224035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing none was held.

The amendments revise, add or repeal the following parts of Title 62, Chapter 1 of the Illinois Administrative Code (IAC): 1700-1701, 1705, 1760-1762, 1764, 1770-1780, 1782-1788, 1795, 1800-1801, 1805-1808, 1815-1819, 1824-1828, 1840, 1843 and 1845. These parts concern virtually all aspects of the Illinois program. The revisions are intended to address the concerns and requirements listed in OSMRE's letters of May 21, 1985, and July 22, 1986, and the requirements resulting from the remand order in *ISP* v. *Watt*, supra. The amendments also include revisions resulting from the extensive public comments received and they incorporate the additional flexibility made available in the revised Federal regulations.

Revised §§ 1816.111 through 1816.117 and Parts 1823 and 1825 were submitted as program amendments on May 30, 1985, and were approved by the Director on December 10, 1986 (51 FR 44454-44459). These revised sections and parts govern revegetation of areas disturbed by surface coal mining operations and establish reclamation requirements for prime farmland and high capability land.

IV. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by Illinois on May 22, 1987. Only revisions of particular interest, such as those that address the requirements of OSMRE's May 21, 1985 regulatory reform letter and those required pursuant to the remand order in *ISP* v. *Watt*, are discussed below. Revisions not specifically discussed contain language identical or similar to the corresponding Federal rules, concerning nonsubstantive wording changes, provide for recodification of the rules, or have no Federal counterparts and are not inconsistent with other State or Federal requirements.

Many of the following findings use the term "similar to" when comparing the State rules with the corresponding Federal rules. For purposes of this notice, "similar to" means that the State rules incorporate requirements which are substantively identical to the Federal rules or which contain only minor differences no less effective than and having no adverse effect on the

degree of environmental protection or public participation afforded by the analogous Federal requirements.

1. Part 1700—General

Revisions to this Part affect sections 1700.11—Applicability, 1700.12 Petitions to Initiate Rulemaking, 1700.13—Notice of Citizens Suits, 1700.14—Availability of Records, 1700.15—Computation of Time, 1700.16—Fees and Forfeitures, 1700.17—Administration, and 1700.18—Advisory Council on Reclamation. The first five sections are substantively identical to the corresponding Federal regulations at 30 CFR 700.11, 700.12, 700.13, 700.14, and 700.15, respectively.

In addition, paragraphs (c) through (e) of section 1700.11 contain provisions corresponding to 30 CFR 701.11. Illinois has updated and condensed these requirements, deleting provisions that are inapplicable or moot, but they remain substantively identical to the corresponding Federal provisions concerning the applicability of the permanent program rules and the standards applicable to existing structures, as modified by the November 27, 1979, suspension notice (44 FR 67942).

Sections 1700.16 and 1700.17 contain provisions pertaining to State accounting procedures and agency powers and duties, while section 1700.18 governs the composition, responsibilities and operation of the Surface Mining Advisory Council. None of these sections contain provisions inconsistent with SMCRA or other Federal requirements.

Therefore, the Director finds that the revised sections of 62 IAC Part 1700 are no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

2. Part 1701—General Definitions

Pursuant to OSMRE's May 21, 1985 letter and other developments, Illinois revised a number of definitions in section 1701.5. The revised definitions are generally similar to the corresponding Federal definitions in 30 CFR 700.5, 701.5, 705.5, 761.5, 762.5, 800.5, 816.46 and 817.46. Therefore, with the exception of the definitions of "previously mined area" and "valid existing rights" discussed in Findings 2(b) and 2(c), the Director finds that they are no less effective than the Federal rules.

The most significant changes are discussed below:

(a) *Public building.* The definition of "public building" to include buildings leased by a governmental agency, as does 30 CFR 761.5.

(b) *Valid existing rights.* Illinois proposes to revise the definition of "valid existing rights" (VER) in 62 IAC 1701.5 to resemble the language in the corresponding Federal definition at 30 CFR 761.5. However, on March 22, 1985, in *In re: Permanent II,* the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. Paragraph (c) was also remanded to the extent that it would expand VER under the "needed for and adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the **Federal Register** notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Project* v. *Watt,* C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel,* C.A. 87–2366). The Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court did so on June 22, 1988.

In light of the order and opinion of the court in *ISP* v. *Hodel,* supra, the Director is temporarily deferring a decision on the proposed Illinois definition of VER and, by separate notice, is requesting additional comment on whether the "takings" test can be approved as being no less effective than the "good faith all permits" test reinstated by OSMRE in the previously referenced November 20, 1986, suspension notice.

(c) *Previously mined area.* Illinois proposed to add a definition of "previously mined area" to mean "land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of 62 Ill. Adm. Code 1700–1850." The corresponding Federal rule at 30 CFR 701.5 defines this term as meaning "land previously mined on which there were no surface coal mining operations subject to the standards of [SMCRA]." The State program provisions referenced in the definition were not approved until June 1, 1982, well after the effective date of SMCRA (generally May 3, 1978). Also, the State definition does not distinguish between lands that were subject to regulation and those that were exempt. Therefore, the State definition would include a greater number of sites than would the Federal rule.

The Illinois definition resembles an earlier version of the Federal rule, which the U.S. District Court for the District of Columbia struck down as being inconsistent with SMCRA because it allowed less than complete highwall elimination in areas mined after SMCRA's reclamation standards took effect (*In re: Permanent II,* July 15, 1985). Since the Illinois definition is similarly used to determine when an operation is eligible for the lesser reclamation standards of 62 IAC 1816.106 and 1817.106, which include incomplete highwall elimination, the Director finds that the Illinois definition is less effective than the Federal rules and less stringent than SMCRA. Therefore, he is not approving the definition to the extent that it includes lands mined after the effective date of SMCRA, except for those lands mined under one of the exemptions provided by SMCRA.

(d) *Coal processing waste.* The definition of "coal processing waste" has been revised to mean earth materials which are separated and wasted from coal during cleaning, concentration or other processing or preparation. This definition is similar to and therefore no less effective than the Federal definition of this term in 30 CFR 701.5.

(e) *Coal preparation.* The definition of "coal processing or coal preparation" contained in 1701.5 has been revised to include chemical or physical processing and to delete reference to the removal of impurities. This definition is similar to and therefore no less effective than the Federal definition of "coal preparation" at 30 CFR 701.5.

(f) *Historic lands.* The revised definition of "historic lands" now includes scientific areas, as does 30 CFR 762.5.

(g) *Cumulative impact area.* Revised section 1701.5 now includes a definition for "cumulative impact area" which includes consideration of impacts from

existing and proposed operations outside the permit area.

The definition is similar to and therefore no less effective than the Federal definition of this term at 30 CFR 701.5.

(h) *Intermittent stream.* As required under 30 CFR 913.16(a) pursuant to the November 30, 1983, remand order of the U.S. District Court for the Central District of Illinois in *ISP* v. *Watt* (49 FR 13494–13521, April 5, 1984), Illinois revised the definition of "intermittent stream" in 62 IAC 1701.5 to mean a reach of stream that drains a watershed of at least one square mile. The State's definition is similar to and therefore no less effective than the Federal definition at 30 CFR 701.5.

3. Part 1705—Restriction on Financial Interests of State Employees

Revisions to this part affect sections 1705.2—Objectives, 1705.4—Responsibility, 1705.6—Penalties, 1705.11—Who Shall File, 1705.13—When to File, 1705.15—Where to File, 1705.17—What to Report, 1705.18—Gifts and Gratuities, 1705.19—Resolving Prohibited Interests, and 1705.21—Appeals Procedures.

The Illinois regulations in 62 IAC Part 1705 are similar to the corresponding sections of 30 CFR Part 705, except that the State rules lack any provisions concerning members of multiple interest boards and commissions. State law currently provides for one such body, the State Advisory Council on Reclamation (Surface Mining Advisory Council). However, section 1.04(c) of the State Act and 62 IAC 1700.18(c) specify that the Council shall act solely as an advisory body and that its recommendations shall have no binding effect. Accordingly, the Council has no function or duty under SMCRA, as this term is defined in 30 CFR 705.5, and it is not subject to the requirements of 30 CFR Part 705.

Therefore, the Director finds that revised 62 IAC Part 1705 is consistent with 30 CFR Part 705. Should Illinois subsequently establish a multiple interest board with a function or duty under SMCRA, its members would be directly subject to 30 CFR Part 705 under the provisions of 30 CFR 705.1.

4. Part 1761—Areas Designated by Act of Congress

Revisions to this part affect section 1761.11—Areas Where Mining is Prohibited or Limited and section 1761.12—Procedures. Except as discussed below, these rules are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 761.11 and 761.12.

(a) *Wild and scenic study rivers.* Illinois has revised 62 IAC 1761.11(a) to include new language protecting study rivers designated under the Wild and Scenic Rivers Act. Like the corresponding Federal rule at 30 CFR 761.11(a) in effect prior to August 15, 1986, the Illinois rule limits this protection to a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied. However, on July 15, 1985, in *In re: Permanent II,* the U.S. District Court for the District of Columbia found the Federal rule to be inconsistent with the regulations promulgated pursuant to the Wild and Scenic Rivers Act, which establish a minimum, rather than a maximum, corridor width of one-quarter mile for study rivers.

On July 16, 1986, OSMRE promulgated a revised version of 30 CFR 761.11(a), which provides that protection shall be afforded to study rivers for the full extent and width of the corridor established under the appropriate Federal guidelines (51 FR 25818). Therefore, the Illinois provision is less effective than the corresponding Federal rule. As there currently are no designated study rivers in Illinois, the Director, rather than disapproving this rule, is requiring that Illinois further amend 62 IAC 1761.11(a) to remove the width restriction on the protection afforded to study river corridors.

(b) Historic sites. On July 15, 1985, in *In re: Permanent II,* the U.S. District Court for the District of Columbia found the Federal rule at 30 CFR 761.11(c) to be inconsistent with section 522(e)(3) of SMCRA to the extent that the rule protected only publicly owned sites listed on the National Register of Historic Places (NRHP). The Illinois regulations at 62 IAC 1761.11(c) and 1761.12(e)(1) retain similar language and are, therefore, less stringent than SMCRA to the extent that they do not protect privately owned sites listed on the NRHP. Accordingly, the Director is disapproving the phrase "publicly owned" in these rules to the extent that it refers to places listed on the NRHP.

(c) Dwelling waivers. Pursuant to OSMRE's May 21, 1985, letter, Illinois revised 62 IAC 1761.12(d) to specify that written waivers for mining within 300 feet of dwellings must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. This language is similar to and therefore no less effective than that of the corresponding Federal rule at 30 CFR 761.12(e).

5. Part 1762—Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

Revisions to this part affect section 1762.12—Additional Criteria and section 1762.14—Exploration of Land Designated as Unsuitable for Surface Coal Mining Operations. The Director finds the revised regulations to be similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 762.12 and 762.14.

6. Part 1764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

This part covers sections 1764.11—General Process Requirements, 1764.13—Petitions, 1764.15—initial Processing Recordkeeping and Notification Requirements, 1764.17—Hearing Requirements, 1764.19—Decision, 1764.21—Data Base and Inventory System Requirements, 1764.23—Public information, and 1764.25—Regulatory Authority Responsibility for Implementation.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised 1764.15(e) to eliminate the provisions allowing suspension of petition reviews.

The Director finds amended Part 1764 substantively identical to and therefore no less effective than 30 CFR Part 764.

7. Part 1772—Requirements for Coal Exploration

This Part covers Sections 1772.1—Scope and Purpose, 1772.11—Notice of Requirements for Exploration Removing 250 Tons of Coal or Less, 1772.12—Permit Requirements for Exploration Removing More than 250 Tons of Coal, 1772.13—Coal Exploration Compliance Duties, 1772.14—Requirements for Commercial Sale, and 1772.15—Public Availability of Information.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions involving coal exploration:

(a) New 1772.12(a) contains a provision consistent with 30 CFR 772.12(a) requiring an exploration permit for exploration removing more than 250 tons of coal or which will take place on lands designated as unsuitable for surface mining.

(b) New 1772.12(b)(7) contains a provision consistent with 30 CFR 772.12(b)(7) requiring that applications for exploration permits include a statement of why extraction of more than 250 tons of coal is necessary for exploration.

(c) New 1772.12(e)(1) contains a provision consistent with 30 CFR

772.12(e) requiring the regulatory authority to notify the applicant, appropriate government officials and other commenters on the application, in writing, of its decision on exploration applications.

(d) On June 9, 1987, the Secretary notified the State of Illinois of a change required as a result of recently approved Federal regulations. The change requires Illinois to add a provision at 1772.12(b)(8)(D) which would require that applications for exploration operations intending to remove more than 250 tons of coal include any additional information which the Department may require regarding known or unknown historic and archeological resources. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required change, and a final decision by OSMRE is forthcoming under a separate Federal Register notice.

The Director finds the Illinois regulations in new Part 1772 substantively identical to and therefore consistent with 30 CFR Part 772, with the exception noted in Finding 7(d).

8. Part 1773—Requirements for Permits and Permit Processing

This Part covers Sections 1773.1—Scope and Purpose, 1773.11—Requirements to Obtain Permits, 1773.12—Regulatory Coordination with Requirements Under Other Laws, 1773.13—Public Participation in Permit Processing, 1774.14—Opportunity for Public Hearing, 1773.15—Review of Permit Applications, 1773.17—Permit Conditions, and 1773.19—Permit issuance and Right of Renewal.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, new Illinois Part 1773 corrected the following deficiencies:

(a) New 1773.12 requires coordination of the review and issuance of permits for surface coal mining and reclamation operations. Under the State rule, permit applications are submitted for review by the Interagency Committee and the Department must assure that comments and recommendations by the Committee address compliance with the applicable requirements of various Federal acts. The provisions are consistent with 30 CFR 773.12.

(b) New 1773.13(a) establishes provisions for filing and public notice for submission of administratively complete applications for permits, significant revisions and renewals. This provision is consistent with 30 CFR 773.13(a).

(c) New 1773.13(a)(1)(F) requires that the public notice indicate if the application includes a request for an experimental practice and identify the regulatory provisions for which a variance is requested. The provision is consistent with 30 CFR 773.13(a)(1)(vi).

(d) New 1773.13(d)(3) establishes provisions for confidentiality of certain information contained in applications. These provisions are consistent with confidentiality provisions contained in 30 CFR 773.13(d)(3).

(e) New 1773.15(c) requires compliance with all of Part 1785. This provision is consistent with 30 CFR 773.15(c). On June 9, 1987, the Secretary notified Illinois of a change required as a result of recently revised Federal regulations. The change added a new finding to the list of written findings at 30 CFR 773.15(c) which the regulatory authority must make prior to approving any permit application or application for a significant revision to a permit. This finding states that the regulatory authority has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places. It also states that this finding may be supported in part by inclusion of appropriate permit conditions or operation plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required change. A final decision by OSMRE is forthcoming under a separate Federal Register notice.

(f) New 1773.17(g) requires payment of reclamation fees consistent with 30 CFR 773.17(g).

The Director finds the Illinois regulations in new Part 1773 substantively identical to and therefore consistent with 30 CFR Part 773 except as noted in Finding 8(e).

9. Part 1774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

This Part covers sections 1774.11—Department Review of Permits, 1774.13—Permit Revisions, 1774.15—Permit Renewals, 1775.17—Transfer, Assignment, or Sale of Permit Rights.

(a) New 1774.15(c)(1)(D) specifies that the State shall not approve a permit unless it finds that the operator has liability insurance. This provision is consistent with 30 CFR 774.15(c)(1)(iv).

(b) New 1774.17(e)(1) establishes that the State must notify the permittee, the successor, commenters and OSMRE of findings, consistent with 30 CFR 774.17(e)(1).

(c) New 1774.17(e)(2) requires the successor to permit rights to notify the State, consistent with 30 CFR 774.17(e)(2).

The Director finds the Illinois regulations in new Part 1774 substantively identical to and therefore consistent with 30 CFR Part 774.

10. Part 1775 Administrative and Judicial Review of Decisions

This part covers § 1775.1—Scope and Purpose, 1775.11—Administrative Hearing, and 1775.13—Judicial Review.

The Director finds the Illinois regulations in new Part 1775 substantively identical to and therefore consistent with 30 CFR Part 775.

11. Part 1777—General Content Requirements for Permit Applications

This Part covers Section 1777.11—Format and Contents, 1777.13—Reporting of Technical Data, 1777.4—Maps and Plans: General Requirements, 1777.15—Completeness, and 1777.17—Permit Fees.

The Director finds Illinois regulations in new Part 1777 substantively identical to and therefore consistent with 30 CFR Part 777.

12. Part 1778—Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

This Part covers sections 1778.13—Identification of Interests, 1778.14—Violation Information, 1778.15—Right of Entry Information, 1778.16—Relationship to Areas Designated Unsuitable for Mining, 1778.17—Permit Term, 1778.18—Insurance, 1778.21—Proof of Publication, and 1778.22—Facilities or Structures Used in Common.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions:

(a) Revised 1778.13(e) now requires applications to include the name and address of each legal owner of the surface and mineral property to be mined and the names and addresses of owners of property contiguous to the permit. Paragraph 1778.13(e) is therefore consistent with 30 CFR 778.13 (e) and (f).

(b) Revised 1778.13(g) now requires applications to include the MSHA number for all structures requiring MSHA approval. Paragraph 1778.13(g) is therefore consistent with 30 CFR 778.13(g).

(c) Revised 1778.13(h) requires applications to include a statement of all lands, interest in lands, options, or pending bids or interests held or made by the applicant for land contiguous to the area described in the permit application. Paragraph 1778.13(h) is

therefore consistent with 30 CFR 778.13(h).

(d) Revised 1778.14(c) requires a listing of notices of violations received by a subsidiary, affiliate or person controlled by or under common control with the applicant consistent with 30 CFR 778.14(c).

The Director finds the Illinois regulations in amended Part 1778 substantively similar to and therefore consistent with 30 CFR Part 778.

13. Part 1779—Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

This Part covers sections 1779.4—Responsibilities, 1779.5—Use of Existing Data, 1779.6—Use of Expert Opinion, 1779.11—General Requirements, 1779.12—General Environmental Resources Information, 1779.11—Vegetation Information, 1779.20—Fish and Wildlife Resources Information, 1779.21—Soil Resources Information, 1779.22—Land Use Information, 1779.24—Maps: General Requirements, and 1779.25—Cross Sections, Maps and Plans.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions to Part 1779:

(a) Historic properties. Revised 1779.12(b) and 1783.12(b) require that permit applications include information on properties eligible for listing on the National Register of Historic Places. However, as noted in the Director's letter of June 9, 1987, additional revisions are needed for these rules to be no less effective than 30 CFR 779.12(b) and 783.12(b). Illinois has submitted these revisions as a separate proposed amendment, which the Director is now processing in a separate rulemaking.

(b) Fish and wildlife. Revised 1779.20 and 1783.20 require that permit applications include the same fish and wildlife information as that required by 30 CFR 779.20 and 783.20 as they existed at the time of submission. However, on December 11, 1987 (52 FR 47352), these Federal rules were revised and combined with other sections. The Director will separately notify Illinois of the additional changes needed as a result of the December 11, 1987 revisions to the Federal rules.

Except as noted in Findings 13(a) and 13(b) above, the Director finds the Illinois regulations in amended Part 1779 identical to and therefore no less effective than those of 30 CFR Part 779.

14. Part 1780—Surface Mining Permit Application: Minimum Requirements for Reclamation and Operation Plan

Revisions to this Part affect sections 1780.4—Responsibilities; 1780.5—Use of Existing Data; 1780.6—Use of Expert Opinion; 1780.11—Operation Plan: General Requirements; 1780.12—Operation Plan: Existing Structures; 1780.13—Operation Plan: Blasting; 1780.14—Operation Plan: Maps and Plans; 1780.15—Air Pollution Control Plan; 1780.16—Fish and Wildlife Plan; 1780.18—Reclamation Plan: General Requirements; 1780.21—Hydrologic Information; 1780.22—Geologic Information; 1780.23—Reclamation Plan: Postmining Land Uses; 1780.25—Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments; 1780.27—Reclamation Plan: Surface Mining Near Underground Mining; 1780.29—Diversions; 1780.31—Protection of Public Parks and Historic Places; 1780.33—Relocation or Use of Public Roads; 1780.35—Disposal of Excess Spoil; 1780.37—Transportation Facilities; and 1780.38—Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions involving Parts 1780 and 1784:

(a) *Analytical methodology.* Revised 1780.21(a) and 1784.14(a) prescribe the methodology to be used when sampling and analyzing water quality. All water quality sampling and analyses performed to meet water monitoring requirements must be conducted according to methodology consistent with that set forth in 30 CFR 780.21 and 784.14.

(b) *Fish and wildlife.* Revised 1780.16 and 1784.21 require a fish and wildlife plan similar to that required by 30 CFR 780.16 and 784.21 before those Federal rules were revised on December 11, 1987. The Director will separately notify Illinois of the further changes needed as a result of the revised Federal rules promulgated on December 11, 1987 (52 FR 47352).

(c) *Surface water information.* Revised 1780.21(b)(2) and 1784.14(b)(2) require that the application include the name and ownership of surface water bodies, surface water quality information for the adjacent area, and baseline alkalinity information in a manner similar to and therefore no less effective than 30 CFR 780.21(b)(2) and 784.14(b)(2).

(d) *Supplemental hydrologic information.* Revised 1780.21(b)(3) and 1784.14(b)(3) provide that, if the determination of the probable hydrologic consequences (PHC) of mining indicates that adverse impacts to the hydrologic balance on or off the proposed permit area may occur, or if acid-forming or toxic material is present that may result in the contamination of groundwater or surface-water supplies, then supplemental information shall be provided. The revised State rules are identical to and therefore no less effective than 30 CFR 780.21(b)(3) and 784.14(b)(3).

(e) *Alternative water supplies.* Revised 1780.21(e) requires that the application include alternative water source information in cases where the PHC determination indicates that the proposed operation may result in contamination, diminution or interruption of underground or surface waters currently in use. The State rule is identical to and therefore no less effective than 30 CFR 780.21(e).

(f) *PHC determinations.* In revised 62 IAC 1780.21(f) and 1784.14(e), Illinois requires that each permit application contain a determination of the probable hydrologic consequences of mining on the proposed permit and adjacent areas, as do the Federal rules at 30 CFR 780.21(f) and 784.14(e). However, unlike the Federal rules, the State rules do not require that the determination be based on baseline data collected for the permit application or that it include certain specific findings. Nor do the Illinois regulations require that each application for a permit revision be reviewed to determine whether a new or updated determination is necessary. Therefore, the Director finds that the State rules are less effective than the Federal regulations, and he is requiring that Illinois further amend 62 IAC 1780.21(f) and 1784.14(e) to be no less effective than 30 CFR 780.21(f) and 784.14(e).

(g) *Permit revisions.* Revised 1780.21(g)(2) and 1784.14(f)(2) require applications for revisions to be reviewed to determine whether a new or updated assessment of cumulative hydrologic impacts is required. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(g)(2) and 784.14(f)(2).

(h) *Hydrologic reclamation plan.* Revised 1780.21(h) and 1784.14(g) require that applications contain a hydrologic reclamation plan indicating how the relevant requirements of Parts 1816 and 1817 will be met, what measures will be taken to avoid acid or toxic drainage, and how the potential adverse hydrologic consequences identified in the PHC determination will be prevented or mitigated. The revised rules are identical to and therefore no

less effective than 30 CFR 780.21(h) and 784.14(g).

(i) *Groundwater monitoring.* Revised 1780.21(i) and 1784.14(h) require that the application's groundwater monitoring plan provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses. The revised rules also require that monitoring data be submitted to the State every three months for each monitoring location. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(i) and 784.14(h).

(j) *Surface-water monitoring.* Revised 1780.21(j) and 1784.14(i) require that the surface-water monitoring plan be based on the PHC determination and that the paramenters monitored be related to the suitability of the surface water for the current and approved postmining land uses. The revised rules also specify certain parameters that must be monitored in all cases and require that point source discharges be monitored in accordance with 40 CFR Part 434. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(j) and 784.14(i).

(k) *Geologic information* Revised 1780.22(b) and 1784.22(b) require that applications contain geologic information for areas adjacent to the permit area and include chemical analyses of each stratum down to and including the deeper of either the stratum immediately below the lowest coal seem to be mined or any acquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The revised rules are identical to and therefore no less effective than 30 CFR 780.22(b) and 784.22(b).

(1) *Air pollution control plan.* New 1780.15 and 1784.26 specify that applications shall contain air pollution control plans as required by 30 CFR 780.15(b) and 784.26. Illinois has elected not to require air quality monitoring. Since monitoring is an optional requirement under the Federal rules, its omission does not render the State rules less effective than the corresponding Federal rules.

Other than as noted in paragraphs (b) and (f) above, the Director finds that the Illinois regulations in amended Part 1780 are either similar to those of 30 CFR Part 780 or add additional clarifying or State-specific provisions, and that they are therefore no less effective than the Federal requirements.

15. Part 1783—Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

Revisions to this Part affect Sections 1783.4—Responsibilies, 1783.5—Use of Existing Data, 1783.6—Use of Expert Opinion, 1783.11—General Requirements, 1783.12—General Environmental Resources Information, 1783.14—Vegetation Information, 1783.20—Fish and Wildlife Resources Information, 1783.21—Soil Resources Information, 1783.22—Land Use Information, 1783.24—Maps: General Requirements, and 1783.25—Cross Sections, Maps and Plans.

These revisions are identical to those discussed in Finding 13 for Part 1779. Except as noted in Findings 13(a) and 13(b), the Director finds the Illinois regulations in amended Part 1783 to be similar to and therefore no less effective than 30 CFR Part 783. The State has also added certain clarifying and State-specific provisions which do not affect this finding.

16. Part 1784–Underground Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan

Revisions to this Part affect Sections 1784.4—Responsibilities; 1784.5—Use of Existing Data; 1784.6—Use of Expert Opinion; 1784.11—Operation Plan: General Requirements; 1784.12—Operation Plan: Existing Structures; 1784.13—Reclamation Plan: General Requirements; 1784.14—Hydrologic Information; 1784.15—Reclamation Plan: Postmining Land Uses; 1784.16—Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments; 1784.17—Protection of Public Parks and Historic Places; 1784.18—Relocation or Use of Public Roads; 1784.19—Underground Development Waste; 1784.20—Subsidence Control Plan; 1784.21—Fish and Wildlife Plan; 1784.22—Geologic Information; 1784.23—Operation Plan: Maps and Plans; 1784.24—Transportation Facilities; 1784.25—Return of Coal Processing Waste to Abandoned Underground Workings; 1784.26—Air Pollution Control; 1784.27—Rehabilitation of Siltation Structures, Diversions, Impoundments and Treatment Facilities; 1784.29—Diversions; and 1784.200—Interpretive Rules Related to General Performance Standards.

Except as discussed below, the revisions to 62 IAC Part 1784 are identical to those made to 62 Part 1780, as discussed in Finding 14, and the revised rules are similar to the corresponding Federal rules in 30 CFR Part 784. Therefore, except as discussed in Findings 14(b) and 14(f), the Director finds revised 62 IAC Part 1784 to be no less effective than 30 CFR Part 784.

(a) *Subsidence control plans.* Revised 1784.20(b) requires subsidence control plans to include a map of underground workings describing the location and extent of areas in which planned subsidence mining methods will be used and which includes all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage. In addition, 1784.20(c) has been revised to require that subsidence control plans include a description of physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage. The revised rules are similar to and therefore no less effective than 30 CFR 784.20 (b) and (c).

(b) *Subsidence monitoring.* Revised 1784.20(d)(5) requires the subsidence control plan for room-and-pillar operations to include information on any planned monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage. However, unlike the State rule, the Federal rule at 30 CFR 784.20(d) also requires this information for operations using planned subsidence methods. Since revised 1784.20(f) requires a description of measures to be taken in accordance with 1817.121(c) to mitigate or remedy any subsidence-related material damage, Illinois has indicated that this provision can be used to require monitoring if necessary. Therefore, the Director finds that revised 62 IAC 1784.20(d)(5) is no less effective than 30 CFR 784.20(d).

17. Part 1785–Requirements for Special Categories of Mining

Revisions to this Part affect Sections 1785.1—Scope, 1785.2—Objective, 1785.13—Experimental Practices Mining, 1785.14—Mountaintop Removal, 1785.15—Steep Slope Mining, 1785.16—Permits Incorporating Variances from Approximate Original Contour Restoration Requirements, 1785.17—Prime Farmlands, 1785.18—Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Activities, 1785.20 Augering, 1785.21—Coal Preparation Plants Not Located Within the Permit Area of a Mine, 1785.22—In Situ Processing Activities,1785.23—Minor Underground Mine Facilities Not at or Adjacent to the

Processing or Preparation Facility or Area.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions involving Part 1785:

(a) Section 1785.13(e) has been revised to require that experimental practices granting variances from the special environmental protection performance standards applicable to prime farmlands be approved only after consultation with the Soil Conservation Service of the U.S. Department of Agriculture. The revised rule is similar to and therefore no less effective than 30 CFR 785.13(e).

(b) Revised 1785.13(g) requires review of experimental practices no less than every two and one half years consistent with 30 CFR 785.13(g).

(c) Revised 1785.17(b) now specifies the nature and type of reconnaissance inspections that must be made of the proposed permit area to determine whether or not prime farmland is present. 1785.17(b)(1) specifies that reconnaissance inspections shall be either a review of an existing soil survey for the proposed permit area or an onsite inspection of the proposed permit area. This specificity within the Illinois regulations as to the nature and extent of reconaissance inspections is consistent with 30 CFR 785.17(b)(1) which requires the regulatory authority to consult with the U.S. Soil Conservation Service to determine the nature and extent of each individual reconnaissance survey.

(d) Illinois regulations 1779.27 and 1783.27 have been repealed. Illinois regulations no longer provide for the regulatory authority to approve a negative determination of prime farmland on the basis of slope and other factors such as rocky surface and flooding. The repeal of 1779.27 and 1783.27 is consistent with 30 CFR 785.17.

(e) Revised 1785.17(c)(1)(B) now requires soil surveys to include a description of soil mapping units and a representative soil profile as determined by the SCS, including, but not limited to, soil horizon depths, pH, and range of soil densities within the permit area. The rule is therefore consistent with 30 CFR 785.17(c)(1)(ii).

(f) Revised 1785.17(c)(1)(B) now allows other representative soil profile descriptions from the locality to be used if their use is approved by the SCS State Conservationist. The rule is therefore consistent with 30 CFR 785.17(c)(1)(ii).

(g) Revised 1785.17(c)(1)(B) now also allows the Department to request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland. The rule is consistent with 30 CFR 785.17(c)(1)(ii).

(h) Resubmitted 1785.17 no longer exempts land not historically used as cropland, areas smaller than minimum size of soil map units and areas otherwise exempt from the prime farmland performance standards in 1823. Deletion of these exemptions from the prime farmland application requirements was required under 30 CFR 913.16(c) pursuant to the November 30, 1983 remand order in *Illinois South Project* v. *Watt*, supra.

The Director finds the Illinois regulations in amended Part 1785 similar to and therefore consistent with 30 CFR Part 785.

18. Part 1795—Small Operator Assistance

This part covers sections 1795.1—Scope and Purpose, 1795–3—Authority, 1795.4—Eligibility for Assistance, 1795–7—Filing for Assistance, 1795.8—Application Approval and Notice, 1795.9—Program Services and Data Requirements, 1795.10—Qualified Laboratories, and 1795.11—Assistance Funding.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions to Part 1795:

(a) Revised 1795.4 defines "Qualified Laboratory" consistent with the Federal definition contained in 30 CFR 795.3. In addition, under new 1795.10(a) the State program administrator selects a qualified laboratory to make the determination and statement. Illinois provides for qualification and selection of laboratories, as is required by OSMRE.

(b) New 1795.6(b)(4) establishes that annual coal production for SOAP eligibility shall include all coal produced by operations owned by members of the applicant's family and relatives. The rule is therefore consistent with 30 CFR 795.6(a)(iv).

(c) Revised 1795.12(a)(3) now establishes the SOAP applicants shall reimburse the Department for the cost of the laboratory services if the permit is sold, transferred or assigned to another person and the transferee's annual production exceeds 100,000 tons. The provision is consistent with 30 CFR 795.12(a)(3).

(d) New 1795.6 (c) and (d) establish as a criterion for eligibility for assistance that the applicant is not restricted in any manner from receiving a permit under the permanent regulatory program. The provision is consistent with 30 CFR 795.6(a) (3) and (4).

The Director finds the Illinois regulations in amended Part 1795 similar to and therefore consistent with 30 CFR Part 795.

19. Part 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

This part covers sections 1800.1—Scope and Purpose, 1800.4—Department Responsibilities, 1800.5—Definitions, 1800.11—Requirement to File a Bond, 1800.12—Form of the Performance Bond, 1800.13—Period of Liability, 1800.14—Determination of Bond Amount, 1800.15—Adjustment of Amount, 1800.16—General Terms and Conditions of Bond, 1800.17—Bonding Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures, 1800.20—Surety Bonds, 1800.21—Collateral Bonds, 1800.30—Replacement of Bonds, 1800.40—Requirement to Release Performance Bonds, 1800.50—Forfeiture of Bonds, and 1800.60—Terms and Conditions for Liability Insurance.

Significant changes are discussed below:

(a) New 1800.4(e) establishes that operating without a bond is a violation of a condition upon which the permit was issued. Paragraph 1800.4(e) is therefore consistent with 30 CFR 800.4(g).

(B) New State rule 1800.5(b) establishes a definition for collateral bond which is consistent with the Federal definition in 30 CFR 800.5(b). The State rule does not allow real property to be posted as collateral bond; however, it is not required to do so under 30 CFR 800.4.

(c) New 1800.21(e) establishes that persons with an interest in collateral posted as bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time the collateral is offered. This provision is consistent with 30 CFR 800.21(f).

(d) New 1800.50(e)(1) provides that, in the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. Paragraph (e)(1) also allows the Department to complete or authorize completion of reclamation of the bonded area and to recover from the operator all costs of reclamation in excess of the amount forfeited. These provisions are consistent with 30 CFR 800.50(d)(1).

(e) New 1800.40(b)(1) provides that the Department may arrange with the permittee to allow access to the permit area, upon request, by any person with an interest in bond release for the

purpose of gathering information relevant to the bond release proceeding. This provision is consistent with 30 CFR 800.40(b).

(f) *Standards for issuance of permits to persons who forfeit bond.* Illinois is adding a provision at 62 IAC 1800.50(f) to prohibit any person who forfeits a bond from receiving another permit unless that person makes full restitution of reclamation costs for the forfeited site, corrects all violations, pays all civil penalties, posts a cash bond for the new permit, and accepts personal liability for all future violations. Section 510(c) of SMCRA and 30 CFR 773.15(b) prohibit the unconditional issuance of permits to applicants with either outstanding violations or a demonstrated pattern of willful violations of a nature and duration resulting in such irreparable damage to the environment as to indicate an intent not to comply with program requirements. Otherwise, neither SMCRA nor the Federal regulations specify the conditions under which a person who forfeits bond may receive another permit. For this reason, and since 62 IAC 1773.15(b) contains provisions identical to those of 30 CFR 773.15(b) with which the State would also have to comply, the Director finds that Section 1800.50(f) is not inconsistent with any Federal requirement.

(g) *General.* This amendment consolidates the State's bonding and insurance requirements, which were previously located in Parts 1800 through 1808, into Part 1800; all other parts are being repealed. The revised rules include minimum requirements and procedures similar to those in the corresponding Federal rules at 30 CFR Part 800. In addition, the State has included additional safeguards and more specific procedural requirements throughout. Illinois has elected not to accept self-bonds, phased bonds, self-insurance or collateral bonds secured by real estate; it is not required to do so under 30 CFR 800.4, which grants States discretion in deciding what types of bond and insurance to accept. Therefore, the Director finds that revised 62 IAC Part 1800 is no less effective than the corresponding Federal rules in 30 CFR Part 80.

20. Part 1815—Permanent Program Performance Standards for Coal Exploration

Revisions to this Part affect sections 1815.1—Scope and Purpose, 1815.13—Required Documents, and 1815.15—Performance Standards for Coal Exploration. As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised 1815.15(a) to specify that habitats of unique or unusually high value for fish, wildlife and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act shall not be disturbed during coal exploration. The revised Illinois regulations in amended Part 1815 are similar to and therefore no less effective than the corresponding Federal rules in 30 CFR Part 815.

21. Parts 1816 and 1817—Permanent Program Performance Standards for Surface Mining Activities and Underground Mining Operations

Revisions to these nearly identical parts affect all sections except 1816.45/1817.45 (general requirements for sediment control measures), 1816.47/1817.47 (discharge structures), 1816.59/1817.59 (coal recovery), 1817.99 (slides and other damage), 1816.111/1817.111 through 1816.116/1817.116 (revegetation), 1817.131 (temporary cessation of operations), 1816.150/1817.150 (roads), 1817.182 (minor underground mine facilities), and 1816.190/1817.190 (affected acreage map).

Except as noted in paragraphs (k) and (hh) below, the revised rules are similar to and therefore no less effective than the corresponding Federal rules in 30 CFR Parts 816 and 817. Illinois has also added several clarifying specifications to these rules, none of which alter their meaning or intent or adversely affect this finding.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions to Parts 1816 and 1817:

(a) Revised 1816.61(c) and 1817.61(d) require blast designs to be submitted for blasting operations that will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church or institutional building or within 500 feet of an underground mine. These provisions are consistent with 30 CFR 816.61(d) and 817.61(d).

(b) Existing Illinois regulation 1850.13(c) provides that the blaster shall provide direction and on-the-job training to all non-certified blasting personnel under his supervision. Thus, existing 1850.13(c) is consistent with 30 CFR 816.61(c)(4)(ii) and 817.61(c)(4)(ii).

(c) Revised 1816.62(a) and 1817.62(a) establish that at least 30 days before initiation of blasting in a permit area, the operator shall notify, in writing, all residents or owners of structures located within one-half mile of the permit area how to request a pre-blast or condition survey. The State rule submitted on March 28, 1986, contained an exemption not in the Federal rules that such notification shall not be required for any structure where a survey has been previously requested by the present or previous resident or owner and the survey has been conducted by the permittee and copies of the survey have been provided to the owner or resident and the Department. Program amendments resubmitted on May 22, 1987, no longer contain the exemption. Therefore, the State's rules at 1816.62(a) and 1817.62(a) are consistent with 30 CFR 816.62(a) and 817.62(a).

(d) Revised 1816.62(d) and 1817.62(d) require that any surveys requested more than 10 days prior to the beginning of blasting as stated in the published schedule shall be completed by the operator before the start of blasting. These provisions are consistent with 30 CFR 816.62(e) and 817.62(e).

(e) New 1816.67(b) and 1817.67(b) establish airblast limits which are consistent with limits required under 30 CFR 816.67(b) and 817.67(b). The Illinois rules contain the exception provided in the Federal rules at 30 CFR 816.67(e)(2) and 817.67(e)(2), which provide that if a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting airblast limits.

(f) New 1816.67 and 1817.67(b) do not require periodic monitoring of air blasts. 30 CFR 816.67(b)(2) and 817.67(b)(2) require the operator to conduct periodic monitoring to ensure compliance with airblast standards. In requiring periodic monitoring, OSMRE explained (46 FR 9796, March 8, 1983) that to ensure airblast levels are met the location of seismographic monitoring equipment may not be the critical or appropriate location for airblast monitoring. Wind, temperature, and overcast conditions can affect maximum airblast location. Therefore, the Federal rule includes a general provision for periodic airblast monitoring by the operator in which the locations and periods of such monitoring are left to the discretion of the operator and the regulatory authority. Illinois' revised 1780.13(b) requires the applicant to describe the proposed system for monitoring compliance with 1816.67 including the proposed locations for airblast monitoring equipment. This arrangement is acceptable since the Department can require proper placement of monitoring equipment.

(g) New 1816.67(c) and 1817.67(c) establish maximum ground vibration limits consistent with 30 CFR 816.67(d) and 817.67(d). The State provisions in 1816.67(e) include lesser peak particle velocity limits at the location of any dwelling, public building, school, church

or building. The provisions also are consistent with the Federal regulations for distances greater than 5,000 feet from the blast.

(h) New 1816.68(b) and 1817.68(b) require that air blast and ground vibration records be retained for a period of three years. Records must include the type of instrument, its sensitivity and calibration signal or certification of annual calibration, and the date and time of the recording. These provisions are similar to and therefore no less effective than 30 CFR 816.68(b) and 817.6(b).

(i) Revised 1816.102(a)(4) and 1817.102(a)(4) require that disturbed areas be backfilled and graded to minimize erosion and water pollution both on and off the site. This provision is identical to and therefore no less effective than 30 CFR 816.102(a)(4) and 817.102(a)(4).

(j) New 1817.121(g) requires all underground operators to submit, on or before March 1 of each year, three mine maps of underground workings to the Department. The State's rule establishes map format and content requirements which are similar to and therefore no less effective than those of 30 CFR 817.121(g).

(k) Revised 1816.97(b) and 1817.97(b) provide that no surface or underground mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act. The Illinois rules also require the Department, upon notification by the operator of the presence of such species, to consult with appropriate State and Federal fish and wildlife agencies to determine whether and under what conditions operations may proceed. These provisions are consistent with 30 CFR 816.97(b) and 817.97(b) as they existed prior to December 11, 1987. On that date, to conform to the language of the Endangered Species Act, the Director promulgated revised rules that prohibit the conduct of activities which "would be likely to" (rather than "will") jeopardize the continued existence of such species or their critical habitats. Furthermore, the revised rules require the reporting of State-listed as well as Federally-listed species (54 FR 47352).

The Director is separately notifying Illinois of the additional changes needed as a result of the revisions to the Federal rules. In the interim, he expects that Illinois will implement its regulations in a manner consistent with the Federal Endangered Species Act, which remains applicable in all cases.

(l) Revised 1816.97(c) and 1817.97(c) specify that no surface or underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle. These rules also require that the operator promptly report any sightings of eagles. As revised, these rules are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 1816.97(c) and 1817.97(c).

(m) Revised 1816.83 and 1817.83 no longer allow the State to waive the requirement for subdrainage control on coal mine waste refuse piles. Sections 1816.83 and 1817.83 as revised are thus similar to and no less effective than the corresponding Federal rules at 30 CFR 816.83 and 817.83.

(n) New 1816.84(b)(1) and 1817.84(b)(1) specify that coal mine waste impounding structures may not be retained permanently. This provision is identical to and therefore no less effective than 30 CFR 816.84(b)(1) and 817.84(b)(1).

(o) New 1816.89(d) and 1817.89(d) require that hazardous materials be handled in accordance with the Federal Resource Conservation and Recovery Act. Although the corresponding OSMRE rules have been suspended, section 505(b) of SMCRA allows States to adopt provisions more stringent than their Federal counterparts. Furthermore, the rules merely acknowledge the existence and applicability of other Federal statutes and regulations. The State rules are therefore not inconsistent with any Federal requirement.

(p) Revised 1816.71(f) and 1817.71(f) require excess spoil to be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness. However, the rules also provide that the Department may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill. These provisions are consistent with 30 CFR 816.71(e)(2) and 817.71(e)(2).

(q) Revised 1816.71(j) and 1817.71(j) require that a registered professional engineer or other qualified professional specialist under the direction of a registered professional engineer experienced in the construction of earth and rockfill embankments periodically inspect fills during construction. The State's rules at 1816.7171(j)(2) and 1817(j)(2) require the registered professional engineer to provide a certified report of each inspection. These provisions are consistent with 30 CFR 816.71(h) and 817.71(h).

(r) Revised 1816.71(j) (2), (3), (4) and (5) and 1817.71(j) (2), (3), (4) and (5) require the filing of certified reports on the drainage system and protective filters for certain fills. Such reports are to include color photographs taken during and after construction, but before the underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately. Also where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement, color photographs are to be taken to the underdrain as the underdrain system is being formed. The photographs accompanying each certified report are to be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale and to clearly identify the site. These provisions are consistent with 30 CFR 816.71(h)(3) and 817.71(h)(3).

(s) Revised 1816.71(b)(1) and 1817.71(b)(1) now require the fill to be designed using current, prudent engineering practices. In addition, a qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design. These provisions are consistent with 30 CFR 816.71(b)(1) and 817.71(b)(1).

(t) Revised 1816.41(a) and 1817.41(a) require that all surface and underground mining activities be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area. These provisions are consistent with 30 CFR 816.41(a) and 817.41(a).

(u) Revised 1816.41(c)(2) and 1817.41(c)(2) require that, when the analysis of any ground water sample indicates non-compliance with the permit conditions, the operator promptly notify the Department. These provisions are consistent with 30 CFR 816.41(c)(2) and 817.41(c)(2).

(v) Revised 1816.41(f)(1)(A) and 1817.41(f)(1)(A) require drainage from acid- and toxic-forming materials into surface water and ground water to be avoided by identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated. These provisions are consistent with 30 CFR 816.41(f) and 817.41(f).

(w) Revised 1816.41(i) and 1817.41(h) govern discharges into underground mines and require a demonstration that the discharge will prevent material damage outside the permit area. These provisions are consistent with 30 CFR 816.41(i) and 817.41(h).

(x) Revised 1816.43(a)(1) and 1817.43(a)(1) require diversions to be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. These provisions are consistent with 30 CFR 816.43 and 817.43.

(y) Revised 1816.43(b)(1) and 1817.43(b)(1) require the Department to approve diversions within the permit area after finding that the diversion will not adversely affect water quality and related environmental values under 1816.57 and 1817.57. These provisions are consistent with 30 CFR 816.43(b) and 817.43(b).

(z) Revised 1816.43(b)(5) and 1817.43(b)(5) require the design and construction of all stream channel diversions of perennial and intermittent streams to be certified by a qualified registered professional engineer. These provisions are consistent with 30 CFR 816.43(b)(4) and 817.43(b)(4).

(aa) Revised 1816.49(a)(1) and 1817.49(a)(1) require that temporary and premanent impoundments which meet the criteria of 30 CFR 77.216(a) comply with the requirements of 30 CFR 77.216 and State rules 1816.49 and 1817.49. The plan submitted to MSHA shall also be submitted to the Department as part of the permit application. These provisions are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.49 and 817.49.

(bb) Revised 1816.46(b)(5) and 1817.46(b)(5) require that siltation structures be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall structures be removed sooner than two years after the last augmented seeding. These provisions are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.46(b)(5) and 817.46(b)(5).

(cc) Revised 1816.49(a)(2) and 1817.49(a)(2) require the design of temporary and permanent impoundments to be certified by a qualified registered professional engineer experienced in the design and construction of impoundments, in accordance with 62 IAC 1780.25(a). These provisions are similar to and therefore no less effective than the corresponding Federal rules at CFR 816.46(a)(2) and 817.46(a)(2).

(dd) Revised 1816.49(a)(3) and 1817.49(a)(3) require that impoundments be designed and constructed to maintain a seismic safety factor of at least 1.2 and a minimum static safety factor of 1.5 for the normal pool under steady seepage saturation conditions. These factors of safety are identical to and therefore no less effective than those of 30 CFR 816.49(a)(3) and 817.49(a)(3).

(ee) Revised 1816.49(a)(10) (A), (B) and (C) and 1817.49(a)(10) (A), (B) and (C) require that impoundments be inspected by or under the direction of an experienced registered professional engineer regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond. Illinois has also revised these rules to require that copies of the certified inspection reports be maintained at or near the minesite. These provisions are identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 816.49(a)(10) and 817.49(a)(10).

(ff) Revised 1816.49(a)(12) and 1817.49(a)(12) establish procedures to be followed if any examination or inspection of an impoundment discloses that a potential hazard exists. These procedures are similar to and therefore no less effective than the corresponding emergency procedures specified at 30 CFR 816.49(a)(12) and 817.49(a)(12).

(gg) Revised 1816.49(b)(2) and 1817.49(b)(2) require the quality of water in permanent impoundments to be suitable for its intended use and meet water quality standards set forth in 1816.42 and 1817.42. These requirements are identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 816.49(b)(2) and 817.49(b)(2).

(hh) Revised 1816.49(b)(9), 1817.49(b)(9), 1816.49(c) and 1817.49(c) require that impoundments not meeting the size criteria of 30 CFR 77.216(a) be constructed with a spillway that can safely discharge the runoff from, for permanent impoundments, the 50-year, 6-hour precipitation event, or for temporary impoundments, the 25-year, 6-hour precipitation event. The corresponding Federal rules at 30 CFR 816.49(b)(7) and 817.49(b)(7) require, at a minimum, use of the 50-year, 6-hour event for all permanent impoundment spillway structures, while 30 CFR 816.49(c)(2) and 817.49(c)(2) require, at a minimum, use of the 25-year, 6-hour event for all temporary impoundment spillway structures. Under the proposed Illinois rules, spillways for impoundments meeting the size criteria of 30 CFR 77.216(a) would be governed only by the provisions of 30 CFR 77.216, which does not contain similar spillway size requirements. Therefore, the Director finds that the proposed rules are less effective than the corresponding Federal rules and he is requiring that the State revise 1816.49 (b)(9) and (c) and 1817.49 (b)(9) and (c) to include specific spillway size requirements for all impoundments.

(ii) Revised 1816.95(a) and 1817.95(a) require that the exposed surface areas be protected and stabilized to control erosion and air pollution attendant to erosion. These provisions are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.95(a) and 817.95(a).

In addition to the preceding revisions addressing the concerns raised in OSMRE's letter of May 21, 1985, Illinois made the following revisions to comply with the remaining requirements of 30 CFR 913.16 resulting from the November 30, 1983 remand order in *Illinois South Project* v. *Watt*, supra:

(jj) Revised 1816.46 and 1817.46 include sedimentation pond and siltation structure design and performance standards similar to and no less effective than those of 30 CFR 816.46 and 817.46, thus satisfying the requirements of 30 CFR 913.16(d).

(kk) Revised 1816.62(a) and 1817.62(a) require that, at least 30 days before initiation of blasting within a permit area, the operator notify, in writing, all residents or owners of structures located within one-half mile of the permit area of their right to request a preblast survey and the procedures to do so. The revised rules are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.62(a) and 817.62(a). Illinois has thus complied with the requirements of 30 CFR 913.16(e).

(ll) Revised 1816.67(d) and 1817.67(d) specify that flyrock, including blasted material traveling in the air or along the ground, shall not be cast beyond the permit boundaries, beyond the area of regulated access, or more than one-half the distance to the nearest dwelling or other occupied structure. These provisions are similar to and no less effective than those of 30 CFR 816.67(d) and 817.67(d); they thus satisfy the requirements of 30 CFR 913.16(f).

22. Part 1819—Special Performance Standards for Auger Mining

This Part covers sections 1819.1–Scope, 1819.11–General, 1819.13–Coal Recovery, 1819.15–Hydrologic Balance, 1819.17–Subsidence Protection, 1819.19–Backfilling and Grading and 1819.21–Protection of Underground Mining.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17,

Illinois made the following revisions involving Part 1819:

(a) Rule 1819.11(c)(1), which had allowed auger holes discharging water containing toxic-forming or acid-forming material to be plugged or the discharge treated, has been deleted. New Illinois rule 1819.15(b)(1) requires sealing consistent with 30 CFR 819.15(b)(1).

(b) New Illinois rule 1819.17 now requires that auger mining be conducted in accordance with the requirements of 1817.121(a) and (c) and is no less effective than 30 CFR 819.17.

The Director finds the Illinois regulations in amended Part 1819 similar to and therefore consistent with 30 CFR Part 819.

23. Part 1824—Special Performance Standards: Mountaintop Removal

This Part covers sections 1824.1–Scope, 1824.2-Objective and 1824.11-Performance Standards.

The Director finds the Illinois regulations in amended Part 1824 similar to and therefore consistent with 30 CFR Part 824.

24. Part 1825—Special Performance Standards on High Capability Lands

This Part covers sections 1825.11–Special Requirements, 1825.12–Soil Removal, 1825.13-Soil Stockpiling and 1825.14–Soil Replacement.

The Director finds that the Illinois regulations in amended Part 1825 (for which there is no Federal counterpart) do not adversely affect other aspects of the program and are not inconsistent with SMCRA or the Federal regulations.

25. Part 1827—Special Performance Standards: Coal Preparation Plants Not Located Within the Permit Area of a Mine

This Part covers sections 1827.1–Scope, 1827.11–Applicability, and 1827.12–Performance Standards.

The Director finds the Illinois regulations in amended Part 1827 to be similar to and therefore consistent with 30 CFR Part 827.

26. Part 1828—Special Performance Standards: In Situ Processing

This Part covers sections 1828.1–Scope, 1828.2–Objectives, 1828.11–Performance Standards and 1828.12–Monitoring.

The Director finds the Illinois regulations in amended Part 1828 to be similar to and therefore consistent with 30 CFR Part 828.

27. Part 1840. Department Inspections

This Part covers sections 1840.1–Scope, 1840.2–Monitoring and Reporting, 1840.11–Inspections by the Department, 1840.12–Right of Entry, 1840.14–Availability of Records, 1840.15–Citizen's Requests for State Inspections, 1840.16–Review of Adequacy and Completeness of Inspections and 1840.17–Review of Decision Not to Inspect or Enforce.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised section 1840.14(b) to establish that copies of all records, reports, inspection materials or information obtained by the Department shall be available to the public in the area of mining until at least five years after expiration of the operation. Illinois rule 1840.14(b) is thus consistent with 30 CFR 840.14(b).

The Director finds the Illinois regulations in amended Part 1840 similar to and therefore consistent with 30 CFR Part 840.

28. Part 1843—State Enforcement

This Part covers sections 1843.11–Cessation Orders, 1843.12–Notices of Violations, 1843.13–Suspension or Revocation of Permits, 1843.14–Service of Notices of Violation, Cessation Orders and Show Cause Orders, 1843.15–Informal Public Hearing, 1843.16–Formal Review of Citations, 1843.17–Temporary Injunctive Relief, 1843.18–Inability to Comply, 1843.20–Intervention, 1843.21–Discovery, and 1843.22–Petitions for Award of Costs and Expenses Under section 525(e) of the Federal Act.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois, in 62 IAC 1843.11(a)(2), has added language requiring the issuance of a cessation order to any person conducting surface coal mining and reclamation operations without a valid surface coal mining permit. This new provision is similar to and therefore no less effective than the corresponding Federal rule at 30 CFR 843.11(a)(2).

The Director finds the Illinois regulations in amended 62 IAC Part 1843 to be consistent with the corresponding Federal rules at 30 CFR Part 843 in that the Illinois rules incorporate sanctions no less effective than those of 30 CFR 843.11, 843.12, and 843.13 and include similar procedural requirements.

29. Part 1845—Civil Penalties

Revisions to this part affect section 1845.11—How Assessments are Made, 1845.12—When Penalty Will be Assessed, 1845.13—Factors to be Considered in Assessing Civil Penalties, 1845.15—Assessment of Civil Penalties, 1845.18—Payment of Assessment; Hearing Request Deadline, 1845.19—Procedures for Hearing, and 1845.20—Final Assessment and Payment of Penalty.

Most revisions are editorial in nature or add specificity without altering the intent or meaning of the rules. The chief substantive change is the addition of specific penalty determination formulas, procedures and thresholds. This penalty determination method is based on the four factors required by section 518(a) of SMCRA (history of previous violations, seriousness of the violation, permittee negligence, and any demonstrated good faith in attempting to achieve rapid compliance) and incorporates all mandatory penalties established by SMCRA.

In addition, Illinois has revised 62 IAC 1745.17(b) to specify that failure to serve a proposed assessment within 30 days of issuance of the notice or order shall not be grounds for dismissal unless the person assessed proves actual prejudice as a result of the delay and makes timely objection to the delay. This provision is similar to and no less effective than 30 CFR 845.17(b)(2).

The Director finds that the Illinois regulations in amended Part 1845 incorporate penalties and sanctions no less stringent than those set forth under sections 518 and 521 of SMCRA and no less effective than the regulations in 30 CFR Part 845. Except for the lack of provisions for assessment conferences, which States need not include in their programs, the Illinois rules also contain the same or similar procedural requirements as the corresponding Federal rules, as required by the cited sections of SMCRA.

V. Disposition of Agency and Public Comments

As described in the section of this notice entitled "Discussion of Amendments," OSMRE twice solicited public comment on the proposed amendments. Also, as required under 30 CFR 732.17(h) (4) and (11), the Director solicited the views of the State Historic Preservation Officer and all Federal agencies with an actual or potential interest in the proposed amendments.

All comments received on the proposed regulations, both as originally submitted on March 28, 1986, and as resubmitted on May 22, 1987, are discussed below. Where different commenters provided similar comments, only one response has been provided.

Agency Comments

Note: Comments of the State Historic Preservation Officer are summarized and discussed under the "Public Comments" section (Comment Nos. 149–157).

1. The Environmental Protection Agency (EPA) commented that proposed section 1773.12, which lists the Federal laws with which mining permits must comply, does not mention several important environmental statutes, such as the Clean Water Act and the Clean Air Act. EPA states that these missing laws should be added to the list in section 1773.12.

Illinois rule 1773.12 requires coordination of the review and issuance of permits with the same list of Federal Acts and Executive Orders as contained in 30 CFR 773.12 and is therefore consistent. EPA's comment was considered by OSMRE in development of 30 CFR 773.12. At 48 FR 44357 (September 28, 1983), OSMRE stated that permit review should be coordinated with actions taken to comply with other Federal statutes. In the Illinois program, all Federal or State governmental agencies with applicable permit-issuing authority will be notified under State's 1773.13(a)(3)(A) and given opportunity to comment.

2. EPA commented that in proposed 1773.13 only persons who may be adversely impacted by the decision on the permit application may comment on the application but that 40 CFR 25.3 allows any person to comment on permit applications.

40 CFR Part 25 sets forth minimum requirements for public participation in activities under the Clean Water Act, the Resource Conservation and Recovery Act and the Safe Drinking Water Act. It is 30 CFR Part 773 which sets forth requirements for public participation in State regulatory programs under SMCRA. In this regard Illinois' 1773.13 allowing only persons who may be adversely impacted to comment is consistent with 30 CFR 773.13.

3. EPA commented that under proposed 1774.13(d)(5) incidental changes can include increases to the permit area in excess of 20 percent, possibly much higher and that potential adverse impacts to water resources can occur if the monitoring systems are not expanded and changes in permitted effluent limits are not made. EPA recommended a tighter definition of incidental boundary changes and stated that any change to the permitted area should result in a reevaluation of the monitoring networks and effluent limits as well as any other environmental impacts.

Section 511(a)(2) of SMCRA provides that the regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. 30 CFR 774.13 mandates that the regulatory authority establish guidelines for the scale or extent of revisions for which all permit application information requirements and procedures (including notice, public participation and notice of decision) shall apply. The Federal rule further states that these procedures shall apply, at a minimum, to all significant permit revisions.

30 CFR 774.13(d) establishes that any extensions to the area covered by the permit except incidental boundary revisions shall be made by application for a new permit. Thus the scale and extent of incidental boundary revisions is left to the State regulatory authority to incorporate into the State program. Illinois establishes the scale and extent in 1774.13(d). Changes which qualify as incidental boundary revisions under the Illinois rule must be applied for and reviewed by the Department. All potential adverse impacts to water and other resources must be considered and the Department must modify or expand monitoring systems and make changes to permitted effluent limits if appropriate and warranted by the additional area. Classification as an incidental boundary revision allows omission only of procedural requirements, not review and evaluation requirements.

4. EPA commented that proposed Illinois regulation 1780.15 dealing with air pollution control plans has been limited to 30 CFR 780.15(a)(2) and (b)(2) of the Federal regulations dealing solely with a plan for fugitive dust control practices as required under 30 CFR 816.95. EPA notes that no plan for monitoring air pollution is proposed. Resubmitted Illinois 1780.15 requires each application to contain a plan for fugitive dust control practices as required under 1816.95. The Federal rules for air pollution control plans require an air quality monitoring program for operations east of the 100th meridian only if so required by the regulatory authority. Since Illinois operations fall within this category, Illinois regulation 1780.15 is consistent with 30 CFR 780.15(b). Paragraph (a) of the Federal rule does not apply.

5. EPA noted that proposed Section 1784 describes a comprehensive monitoring program for both ground and surface waters but that the permittee should be required to submit a quality assurance plan covering the parameters to be monitored and the plan should be made part of the permit application. EPA also commented that the permittee should make available all monitoring data obtained from the permittee's monitoring activities. Resubmitted Illinois regulations 1784.14(h) and (i) dealing with ground water and surface water monitoring plans are consistent with Federal regulations 784.14(h) and (i).

6. EPA commented that the list of parameters which the permittee must monitor for surface water monitoring programs in proposed 1784.14(i)(2)(A) should only be a minimum list of parameters and the State should have the authority to require monitoring of additional pollutants, if necessary. Resubmitted 1784.14(i)(2)(A) is consistent with 30 CFR 784.14(i)(2)(i). Resubmitted 1784.14(i)(3) allows for additional monitoring requirements if it is determined the existing or proposed monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

7. EPA commented that proposed 1784.26, dealing with an air pollution control play for underground mining permits, significantly limits the Federal regulations dealing with fugitive dust control practices under 30 CFR Section 817.95. 30 CFR 784.26(a) provides that the application shall contain an air quality monitoring program if required by the regulatory authority. Illinois has chosen not to require an air quality monitoring program. Resubmitted 1784.26 does require a plan for fugitive dust control practices and is consistent with Federal regulations.

8. EPA commented that proposed 1817.41, dealing with groundwater protection, does not include 817.41(b)(2) of the Federal regulations. Part (b)(2) of 817.41 was suspended by OSMRE on February 21, 1985 (50 FR 7278) and removed on December 2, 1987 (52 FR 45920).

9. EPA commented that proposed 1817.46(b)(3), which deals with underground mining, refers to "surface" mining instead of "underground" mining. Resubmitted 1817.46(b)(3) uses the term "underground" instead of "surface".

10. EPA commented that definitions of many of the terms in the rules would be helpful. Examples of terms needing definition included "shadow area" and "adjacent area". Definitions are given in Section 1701.5 of Illinois' regulations. Both "shadow area" and "adjacent area" are defined in Section 1701.5.

11. The United States Fish and Wildlife Service (FWS) commented that the definition of affected area contained in the Illinois resubmitted regulation 1701.5 should be revised to read in part, "any water or surface land over which those activities are conducted or located". The suggestion would substitute the word "over" for "upon" in reference to underground mining

activities. Because the term "affected area" as utilized by Illinois also includes surface areas for underground mines not over underground mining areas the substitution would not be appropriate.

12. The FWS pointed out that the Illinois definition of land use in resubmitted regulation 1701.5 could be read such that the reference to vegetation would infer that such vegetation would not affect the quality or value of various land uses. Illinois utilized the exact language of the Federal counterpart, 30 CFR 701.5, and therefore is consistent. It was further suggested by the FWS that the Illinois definition of "recreation" be expanded to include wildlife observation and hunting. The Illinois regulation includes other undeveloped recreational uses in which the suggested activities would be included and therefore is not inconsistent with the Federal regulations. The FWS also requested that the term "dedicated" be removed from the Illinois definition of fish and wildlife habitat. The Illinois definition is the same as the Federal definition and therefore is consistent.

13. The FWS requested that a definition of "subsidence" be added to the Illinois program because of the impact on surface land and water. Illinois has determined that it is not necessary to include a definition of this term. The protection of land and water is assured by other regulations in the Illinois program. The lack of a definition for "substance" is not inconsistent with Federal regulations.

14. The FWS commented that "threatened and endangered species" should be defined and the relationship between Federal and State listed and proposed species explained. OSMRE believes that the term "threatened and endangered species" is well defined by other Federal and State laws and regulations which are referenced by both Illinois and the Federal rules and therefore need not be included in the Illinois regulations.

The explanation of the relationship between Federal and State endangered species is contained in the Interagency Agreement between the regulatory authority and the Illinois Department of Conservation. This agreement is part of the approved State regulatory program.

15. The FWS asked that a definition of "wetlands" be included in the resubmitted Illinois regulations. The Federal regulations do not include this definition and therefore the lack of a wetland definition is not inconsistent with the Federal rules.

16. The FWS requested that endangered species determinations and cultural resource areas be added to resubmitted Illinois regulation 1761.11(b) relating to lands unsuitable for mining. Section 1761.11(c) references historical resources. Endangered species protection is provided by other sections of the Illinois program. The regulations as submitted are consistent with the Federal rules.

17. The FWS commented on resubmitted Illinois regulations 1761.15(a) and (b), which deal with the processing of lands unsuitable petitions. The concern was expressed that, unless there was an imminent threat or mining application on file, a petition would not be considered. The Illinois program provides that any petition which is deemed complete, is not frivolous and concerns an area with identified coal resources will be processed.

18. The FWS requested that resubmitted regulation 1772.12(b)(12) be revised to require identification of endangered species habitat in addition to critical habitat and cultural resources. The Federal counterpart, 30 CFR 772.12(b)(12), requires only critical habitat identification. The Illinois regulation is therefore consistent with the Federal rule. Cultural resources are required to be described in Illinois regulation 1772.12(b)(8) and need not be included in 1772.12(b)(12).

19. The FWS asked for clarification of Illinois regulation 1772.12(d)(2)(B) which requires that IDMM find in writing that the applicant for an exploration permit has demonstrated that the proposed operation will not jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat. Resubmitted 1772.(d)(2)(B) is exactly the same as 30 CFR 772.12(d)(2)(ii) and is therefore consistent. No clarification is required.

20. The FWS requested that Executive Orders 11988 and 11990, the Clean Water Act and the Archeological Resources Protection Act of 1979 be added to Illinois section 1773.12, which concerns permit coordination. These laws are not specifically included in the Federal counterpart, 30 CFR 733.12, and are therefore not required in the State program, although the State must of course comply with any applicable provisions, as stated in the general language of Illinois rule 1773.12.

21. The FWS commented that resubmitted Illinois regulation 1773.15(c) requires the State to find in writing that the direct, indirect, and comulative impacts of the proposed permit action on fish and wildlife resources and their habitats and wetlands have been adequately and properly mitigated. Resubmitted 1773.15(c) contains the required finding of the Federal counterpart, 30 CFR 773.15(c); therefore, the suggested language is not required.

22. The FWS requested that insignificant revisions as described in resubmitted regulation 1774.13(b) be subject to Federal agency review to determine the affect on Federal laws, rules and regulations and that such revisions which impact Federal lands also be subject to Federal review. Consistent with Federal regulations, Illinois has provided guidelines as to the scale or extent of revisions for which all permit application information and requirements shall apply. Insignificant revisions by their definition do not require the review suggested. The Illinois regulation is consistent with the Federal rules.

23. The FWS requested that a requirement be added to resubmitted Part 1779 describing diversions. Part 1779 and the Federal counterpart, 30 CFR Part 779, define the minimum requirements for information on environmental resources including the location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and ditches within the proposed permit and adjacent areas. Information concerning diversions would be included in the required information. Resubmitted Part 1779 is consistent with 30 CFR Part 779.

24. The FWS commented that the fish and wildlife description required by resubmitted 1779.20 should discuss the conditions existing before the current conditions were changed to allow for mining (within the last five years). In addition, the FWS stated that that information, including a description of listed and proposed threatened or endangered species, should be the baseline for the plan developed under 1780.16. Resubmitted 1779.20 includes the information required by former 30 CFR 779.20. Any additional requirements, resulting from the December 11, 1987 revisions to the Federal rule will be addressed in a separate letter from the Director.

25. The FWS commented that land use information required by resubmitted 1779.22 should include wildlife habitat and recreational uses as well as agricultural aspects. Resubmitted 1779.22 is consistent with 30 CFR 779.22.

26. The FWS commented that maps submitted in accordance with 1779.24 should identify public lands, wetlands, natural areas and wildlife areas. Resubmitted 1779.24 is consistent with 30 CFR 779.24.

27. The FWS commented that the phrase "where practicable" in 1780.16(a)(1) is not appropriate. Resubmitted 1780.16(a)(1) is identical to

30 CFR 780.16(a)(1) and is therefore consistent.

28. The FWS commented that wetlands should be added to the list of water areas in 1779.25(a)(7). Resubmitted 1779.25(a)(7) is consistent with 30 CFR 779.25(a)(7).

29. The FWS commented that threatened or endangered species should be separated from 1780.16(b) as there are special requirements for these species and an endangered species permit may be required before work can be done. Resubmitted 1780.16(b) is consistent with the Federal counterpart.

30. The FWS commented that the term "enhancement" needs to be defined in 1780.16(a)(2). Use of the term "enhancement" in resubmitted 1780.16(a)(2) is identical to 30 CFR 780.16(a)(2) and is not inconsistent with the Federal regulations.

31. The FWS requested in relation to 1780.23 that all pre-mining land uses including wildlife habitat and recreation be considered. The FWS also stated that Federal laws, rules, policies, etc. should be considered in conjunction with State and local land use plans. Resubmitted 1780.23 is consistent with 30 CFR 780.23.

32. The FWS requested that wetlands and riparian habitat be added to the list of waters and adjacent areas in 1780.25. Resubmitted 1780.25 is consistent with 30 CFR 780.25.

33. The FWS suggested that the reference to "surface" coal mining operations in 1783.12(a) is confusing and noted that the section makes no mention of surface impacts from underground mining such as subsidence. Resubmitted 1783.12(a), dealing with general environmental resources information for underground mining permit applications, is consistent with 30 CFR 783.12(a). Additional information regarding subsidence is required by 1784.20.

34. The FWS commented that 1783.20(a) should include a description of areas expected to be impacted by subsidence. Resubmitted 1783.20(a) is consistent with 30 CFR 783.20(a).

35. The FWS requested in relation to 1783.20(a) that the Service be included in the review of mining on, under and adjacent to Federal lands and waters. Resubmitted 1783.20(c) requires the regulatory authority to consult with the Illinois Department of Conservation (IDOC). IDOC is obligated to consult and coordinate with the FWS on a routine basis about what is required in permit applications. Resubmitted 1783.20(c) is not inconsistent with 30 CFR 783.20(c).

36. The FWS commented that productivity for wildlife and recreation should be included in the information required by 1783.22(a)(2)(B). Resubmitted 1783.22(a)(2)(B) is identical to 30 CFR 783.22(a)(2)(ii).

37. The FWS commented that maps submitted in accordance with 1783.24 should identify public lands, wetlands, natural areas and wildlife areas. Resubmitted 1783.24 is consistent with 30 CFR 783.24.

38. The FWS commented that a requirement should be added to 1784.13 to discuss plans for fish and wildlife habitat. Resubmitted 1784.13 is consistent with counterpart 30 CFR 784.13.

39. The FWS commented in relation to 1784.16 that wetlands may be designed in the plan or may occur in time as some of the mentioned water bodies age. Resubmitted 1784.16 is not inconsistent with 30 CFR 784.16.

40. The FWS made numerous comments and suggestions concerning 1784.20(e). Resubmitted 1784.20(e) is identical to its counterpart at 30 CFR 784.20(e) and is therefore consistent with the Federal regulation.

41. The FWS made numerous comments and suggestions concerning 1784.23. Resubmitted 1784.23 is consistent with Federal counterpart 30 CFR 784.23.

42. The FWS commented in reference to 1785.13(b)(2) that wildlife and recreational use other than recreational facilities could be post-mining uses. Resubmitted 1785.13(b)(2) is identical to 30 CFR 785.13(b)(2).

43. The FWS commented in reference to 1785.14(c)(1) that wildlife and recreational use other than recreational facilities could be post-mining land uses. Resubmitted 1785.14(c)(1) is consistent with 30 CFR 785.14(c)(1).

44. The FWS commented in reference to 1785.16(a)(1) that wildlife and recreational use other than recreational facilities could be post-mining land uses. Resubmitted 1785.16(a)(1) is consistent with 30 CFR 785.16(a)(1).

45. The FWS commented that the map and aerial photographs required by 1785.23(c)(4) should show the location of fields and fences and the various types and sizes/ages of vegetation and recreational land uses. Current 1785.23(c)(4) is not being changed and therefore is not part of this rulemaking.

46. The FWS indicated that Sections 1816.116 and 1817.116, as referenced by Section 1800.13(a), were not included in the review document. The FWS also commented that a minimum five-year period of responsibility should be required for grasses and herbaceous vegetation, with a minimum of 50 years for woody vegetation. Amended Sections 1816.116 and 1817.116 were approved by OSMRE on December 10, 1986 (51 FR 44454). Resubmitted 1800.13(a) is consistent with Federal regulations.

47. The FWS commented in relation to 1815.15(a) that no threatened or endangered species or their habitats may be affected prior to consultation. Resubmitted 1815.15(a) is identical to 30 CFR 815.15(a).

48. The FWS commented in reference to 1815.15(f) that wetlands and their watersheds should not be affected and unavoidable impacts should be properly and adequately mitigated. Resubmitted 1815.15(f) is consistent with Federal regulation 30 CFR 815.15(f).

49. The FWS indicated that Parts 1816.111 through 1816.132 are shown in the Section 1816 index but not included in the review document. These sections are not part of this rulemaking.

50. The FWS made two comments in reference to 1816.43. First, the slopes of diversion banks should be at a grade that supports vegetation to control erosion and the regulation should be expanded to assure that operators design and maintain vegetated slopes that prevent soil erosion and pollution of receiving waters except for sedimentation/silt basins that keep sedimentation on-site. Second, any diversions of flows that affect wetlands shall be identified and described and provisions should be made to mitigate for adverse impacts. OSMRE has determined that resubmitted 1816.43 is virtually identical to the Federal counterpart at 30 CFR 816.43 and is therefore no less effective.

51. The FWS commented that it assumes that the retaining structures for the impoundments, ponds, etc. referred to in 1816.56 would have to comply with Federal safety requirements for such structures. Resubmitted 1816.56 is identical to 30 CFR 816.56.

52. The FWS commented in reference to 1816.71(a) that excess spoil should not be placed in wetlands and if no feasible and prudent alternatives to spoil placement in wetlands exist, the area to be affected should be fully described, and an adequate mitigation plan be included in the reclamation plan to assure restoration and maintenance of wetland habitat. Resubmitted 1816.71(a) is identical to 30 CFR 816.71(a).

53. The FWS commented on 1816.72 about loss of wildlife habitat in head of hollow fills. State Section 1816.72 is consistent with 30 CFR 816.72. Wildlife habitat is not discussed in the Federal section.

54. The FWS commented on 1816.83 on coal mine waste placed in wetlands and reducing the maximum final grade slopes to less than 50 percent. State

section 1816.83 is consistent with 30 CFR 816.83.

55. The FWS commented on 1816.97(a) and (b) on adequate mitigation to fish and wildlife and their habitats in the reclamation plan. State rules 1816.97(a) and (b) are consistent with 30 CFR 816.97(a) and (b) in that the reclamation plan is not discussed.

56. The FWS commented on 1816.97(c) and (d) that all protected species should be listed not just eagles. State rules 1816.97(c) and (d) are consistent with 30 CFR 816.97(c) and (d), which specifically concern the protection of eagles.

57. The FWS commented that the words "wildlife habitat" should be added to the first sentence of 1816.97(f) and the second sentence should be deleted. State rule 1816.97(f) is consistent with 30 CFR 816.97(f).

58. The FWS commented that Sections 1817.111 through 1817.117 were not included in the rules submission. Sections 1817.111 through 1817.117 were not part of the submission package because they have not been revised.

59. The FWS commented on section 1817.43(a)(2)(C) on diversions must be designed to properly maintain a quality environment. State rule 1817.43(a)(2)(C) is consistent with 30 CFR 817.43(a)(2)(iii).

60. The FWS commented on section 1817.46(b)(6) on the need for vegetative standards for retained sediment ponds. State rule 1817.46(b)(6) is consistent with 30 CFR 817.46(b)(6), which contains no separate vegetative standards.

61. The FWS commented on section 1817.46(e)(1) on using regular water monitoring to show that an exemption from sediment control is permissible. State rule 1817.46(e)(1) granting sediment pond exemptions is consistent with 30 CFR 817.46(e)(1).

62. The FWS commented on section 1817.49 that structures such as dikes and dams should meet Federal safety standards. State rule 1817.49 is consistent with 30 CFR 817.49.

63. The FWS commented on section 1817.57 that consultation under Section 7 of the Threatened and Endangered Species Act may be necessary if a threatened or endangered species may be affected within a stream buffer zone. State section 1817.57 is consistent with 30 CFR 817.57.

64. The FWS commented on 1817.71 that excess spoil should not be placed in wetlands. State rule 1817.71 is consistent with 30 CFR 817.71.

65. The FWS commented on 1817.72 on loss of wildlife habitat in head of hollow fills. State section 1817.72 is consistent with 30 CFR 817.72.

66. The FWS referred to comments made on section 1816.73. No comments were made on Section 1816.73.

67. The FWS commented on section 1817.81 that waste should not be deposited in wetlands. State section 1817.81 is consistent with 30 CFR 817.81.

68. The FWS commented on section 1817.83 about coal mine waste placed in wetlands and reducing the maximum final grade slopes to less than 50 percent. State section 1817.83 is consistent with 30 CFR 817.83.

69. The FWS commented on 1817.97(a) and (b) on adequate mitigation to fish and wildlife and their habitats in the reclamation plan. State rules 1817.97(a) and (b) are consistent with 30 CFR 1817.97(a) and (b).

70. The FWS commented on 1817.97(c) and (d) that all protected species should be listed not just eagles. State rules 1817.97(c) and (d) are consistent with 30 CFR 817.97(c) and (d) which specifically concern the protection of eagles.

71. The FWS commented on 1817.97(f) that the words "wildlife habitat" should be added to the first sentence and the second sentence should be deleted. State rule 1817.97(f) is consistent with 30 CFR 817.97(f).

72. The FWS questioned 1817.121(c)(1) as to which agency is responsible for the determination of technical and economic feasibility. The agency that issues the permit would be the responsible agency. State rule 1817.121(c)(1) is consistent with the 30 CFR 817.121(c)(1).

73. The FWS commented on 1817.121(c)(2) that the need to protect the vegetative and productive capability of the land as well as the use of insurance may not adequately compensate the owner. State rule 1817.121(c)(2) is consistent with 30 CFR 817.121(c)(2). Vegetative and productive capability of the land is addressed in 1817.121(c)(1).

74. The FWS questioned if the State will provide OSMRE with an annual report under section 1840.2. There is no Federal rule comparable to 1840.2. This section gives the State authority to have the operator provide reports and data and is not inconsistent with the Federal regulations.

75. The FWS commented on section 1843.11 on a cessation order for learning of the presence of an endangered species and mining without a valid permit. State section 1843.11 is consistent with 30 CFR 843.11.

Public Comments

As an initial and general matter, ISP argued that, since Illinois made substantial changes between the first submission to OSMRE on March 28, 1986, and the resubmission on May 22, 1987, the State should have been required to reopen the comment period.

The Director finds that this comment is misdirected since OSMRE has no jurisdiction over procedural aspects of State rulemaking activities. OSMRE has fully complied with all Federal public participation requirements of 30 CFR 732.17 and the Administrative Procedure Act by opening a public comment period and providing an opportunity for a public hearing on each of the State submissions.

Summaries of all public comments received and the Director's responses to them appear below:

1. ISP stated that the Department's proposed definition of "cemetery" should be changed to read "cemetery means any area of land where human bodies are interred." In the regulation resubmitted on May 22, 1987, Illinois revised the definition as suggested.

2. ISP stated that the Department's proposed definition of "coal processing plant" must be revised to include coal crushing and sizing facilities. Illinois changed the term being defined to "coal preparation plant" and revised the definition to include the cleaning, concentrating, or other processing or preparation of coal. Illinois also deleted all references to the seperation of coal from its impurities. As revised, the Illinois definition is similar to and consistent with the Federal definition at 30 CFR 701.5.

3. ISP stated that Illinois must adopt a definition of "road" consistent with the corresponding Federal definition at 30 CFR 701.5. Illinois chose not to do so since the Federal definition has been suspended following its remand in *In re: Permanent Surface Mining Regulation Litigation (II)* (D.D.C., October 1, 1984). Illinois need not define this term in the absence of a Federal definition.

4. ISP claimed that the U.S. District Court for the District of Columbia struck down the "takings" test in the Federal definition of "valid existing rights" and that Illinois therefore must adopt a definition relying on a "mechanical" test. OSMRE notes that the court remanded the Federal definition of "valid existing rights" at 30 CFR 761.5 on procedural grounds without ruling on its consistency with SMCRA. Furthermore, in its March 30, 1988, decision in *ISP* v. *Hodel*, the U.S. Court of Appeals for the Seventh Circuit ruled that, while the Director could not approve a State rule based on the remanded Federal definition, it was not clear that reimposition of the mechanical test would automatically follow.

As discussed in finding 2(b), the Director is deferring a decision on the proposed Illinois definition and he is requesting additional comment on whether the takings test is no less effective than the mechanical tests.

5. ISP commented that Illinois must also amend 62 IAC 1761.11(c) to protect all places listed on the National Register of Historic Places, not just those that are publicly owned. As discussed in Finding 4(b), the Director is disapproving the language limiting protection of sites listed on the Register to those that are publicly owned.

6. ISP commented that the current language of 1761.12(c)(2) should not be amended since it then would be unclear how the public could learn that a mining operation is proposed to be conducted within 100 feet of a public road. OSMRE notes that resubmitted 1761.12(c)(2) now requires public notice in a newspaper of general circulation in the affected area, as does 30 CFR 761.12. The newspaper notice ensures that the public has adequate opportunity to become aware of proposed mining operations within 100 feet of a public road.

7. ISP stated that proposed 1764.15(a)(7), which refers to suspended petitions, should be deleted since proposed 1764.15(a)(3) does not provide for suspension of petitions. Illinois' resubmitted amendments do not include 764.15(a)(7).

8. ISP stated that proposed 1764.17(a)(1) should be amended to provide for cross-examination of expert witnesses only at public hearings for the designation of areas unsuitable for surface coal mining. OSMRE notes that the cross-examination provided for in 1764.17(a)(1) is acceptable since it is required by sections 7.03 and 8.09 of the State Act and was approved in the original approval of the State program and upheld on appeal in *ISP v. Hodel*, supra. As documented in the Administrative Record, the IDMM generally would not cross-examine lay witnesses.

9. ISP recommended that proposed 1764.19(b) which provides the Department with options in designating areas unsuitable for surface mining should be deleted. OSMRE notes that 1764.19(b) clearly establishes that the Department may decide to designate the petitioned land in whole or in part, not designate the petitioned land or to place conditions on future operations. The provision allowing for conditions is consistent with the discretion afforded by the Federal regulations.

10. ISP commented that the phrase "and which may substantially disturb the land surface" contained in proposed 1772.11(a) for coal exploration for less than 250 tons should be deleted. Revised 1772.11(a) as resubmitted by Illinois no longer contains the phrase.

11. ISP commented that the phrase "other specific description" contained in proposed 1772.11(b)(3) needs clarification. OSMRE notes that 30 CFR 772.11(b)(3) which requires the notice to include a narrative or map describing the exploration area was suspended insofar as it allows a notice to be submitted which does not include a narrative describing the exploration area (See 51 FR 41961, Nov. 20, 1986). OSMRE finds Illinois' requirement for other specific descriptions consistent with the suspension and the current Federal rules.

12. ISP stated that proposed 1773.13(a)(1)(D) establishing certain notice requirements should be expanded to identify the location where written requests for public hearings on applications may be submitted. Revised 1773.13(a)(1)(D) as resubmitted includes where to submit requests for public hearings.

13. ISP stated that proposed subsection 1774.13(b)(2)(iv) granting exceptions to significant revisions should be repealed since it goes beyond that allowed under section 511 of SMCRA. OSMRE disagrees and reaffirms its finding in the original program approval and pursuant to the Remand Order. 30 CFR 774.13(b)(2) and section 511(a)(2) of SMCRA provide that the regulatory authority (State) shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Illinois' exceptions in 1774.13(b)(2)(D) have not changed in this rulemaking and are consistent with the Federal rules.

14. ISP stated that proposed 1778.15(d), which allows attorney's statements to suffice for right of entry documents, should be expanded to cover the right to subside in the shadow area. Illinois has revised 1778.15(d) by clarifying that the attorney statement may cover the legal right to enter and commence surface coal mining and reclamation operations proposed in the application. This includes planned subsidence operations as made explicit in 1778.15(a).

15. ISP commented that the term "surface mining activities" as used in proposed 1778.16(c) needs to be defined. In resubmitted 1778.16(c), Illinois uses the term "surface coal mining operations," which is defined. OSMRE finds this term and definition identical to the term and definition in the Federal regulations at 30 CFR 701.5.

16. ISP stated that Illinois must include an air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices. Illinois states that 30 CFR 780.15(b) provides for an air quality monitoring program only if required by the regulatory authority. Illinois has opted to not require such programs. OSMRE agrees with Illinois that air quality monitoring programs under 30 CFR 780.15(b)(1) are left to the discretion of the regulatory authority.

17. ISP and EPA commented that 1780.21(f) and 1784.14(e) concerning determinations of probable hydrologic consequences must include the specific requirements of 30 CFR 780.21(f) (1), (2), (3) and (4) and 784.14(e) (1), (2), (3), and (4), respectively. OSMRE is requiring Illinois to revise 1780.21(f) and 1784.13(e) to be no less effective than the Federal rules. See Finding 14(f).

18. ISP commented that the first sentence in proposed 1780.21(i)(2) and 1784.14(h)(2) should be changed to show that there will not be adverse impacts anywhere within the cumulative hydrologic impact area. ISP points out that the Federal rule was remanded by Judge Flannery (*In Re: Permanent Surface Mining Regulations Litigation II*, C.A. No. 79–1144, D.D.C. 1984). OSMRE notes the language proposed by the State is not the same as that remanded by the Court. The State indicates in the Administrative Record that it will consider whether an impact is appreciable before waiving the requirement for ground water monitoring. OSMRE is approving the regulation but notes that the Department must not grant a waiver unless the aquifer does not significantly ensure the hydrologic balance within the cumulative impact area. Illinois also indicates it will promulgate a new rule on this subject, if necessary, after a new regulation is promulgated by OSMRE.

19. ISP commented that the phrase "to the extent information is available to identify tile drainage fields" should be deleted in proposed 1783.24(e) dealing with maps. Illinois deleted the phrase in its resubmitted 1783.24(e) so that drainage fields must be identified even when such information is not available.

20. ISP commented that the phrase "including surface and underground agricultural drainage systems" should be retained in Section 1784.20. ISP noted that surface and subsurface agricultural drainage systems should be included under all protections granted to structures. Resubmitted 1784.20 has been revised by Illinois to retain the phrase. Illinois stated that agricultural drainage systems, as structures, have

always been afforded identification and protection.

21. ISP commented that current Subsection 1784.20(c) should be retained in addition to proposed Subsection 1784.20(c). ISP stated that Illinois should not delete the requirement that the applicant give a detailed description in its permit application of the measures to be taken to mitigate the effects of subsidence because people who are going to be undermined should be given the opportunity to comment on such plans.

Illinois, however, notes that in order for a permit applicant to satisfy the requirements of Subsection 1784.20(f), it is necessary to describe measures to be taken in accordance with Section 1817.12(c), which outlines mitigation measures that are required. In this regard Illinois states that the revised regulations do not differ from the requirements of the previous regulations. Both 1784.20(c) and 1784.20(f) are consistent with the Federal regulations and therefore acceptable.

22. ISP commented that current Subsection 1784.20(d) should be retained in addition to proposed Subsection 1784.20(d). ISP noted that operators will take measures to determine the amount of subsidence damage for which they are responsible before they begin correcting such damage and the public should be given opportunity to review and comment on these measures during the permit application review. A detailed description of such measures is not required by the Federal regulations. However, Illinois believes such measures are necessary in order to assure that mitigation is fully achieved, and 1784.20(f) now contains such a requirement. OSMRE finds that 1784.20(f) is consistent with the Federal regulations.

23. ISP commented that deleted Subsection 1784.20b(3)(A–D) should be retained. These subsections required descriptions of measures to be taken on the surface to prevent damage. OSMRE, however, notes that for areas of planned subsidence such descriptions of preventive measures are not required by the Federal regulations. Illinois regulations 1784.20 (e) and (f) pertaining to descriptions of anticipated subsidence and measures to be taken to mitigate or remedy the effects of subsidence are consistent with 30 CFR 784.20 (e) and (f).

24. ISP commented that 30 CFR 785.16, which the proposed Illinois rule mirrors, was remanded by the District Court in *In Re: Permanent, supra*. ISP noted that the court found that SMCRA only allows approximate original contour (AOC) variances for steep slope mining. Resubmitted Illinois rule 1785.16 now establishes that AOC variances can only be obtained for steep slope mountaintop removal mining. OSMRE finds 1785.16 consistent with the Federal regulations.

25. ISP commented that proposed 1785.17(a) should be revised to apply clearly to both surface mining and the surface effects of underground operations. Resubmitted Illinois rule 1785.17(a) clarifies that the rule applies to surface coal mining and reclamation operations, which include the surface effects of underground operations on prime farmlands and is therefore consistent with the 30 CFR 785.17(a).

26. ISP commented that proposed 1785.17(b)(1) pertaining to prime farmland reconnaissance inspections should be revised to require consultation with the U.S. Soil Conservation Service consistent with 30 CFR 785.17(b). Illinois added the requirement to resubmitted 1785.17(b)(1).

27. ISP commented that proposed and resubmitted 1800.11(b)(1) should be changed to require the bond to cover the entire permit area upon which the operator will initiate and conduct surface coal mining operations during the initial term of the permit. ISP's comment is based on the U.S. District Court's remand in *In Re: Permanent, supra* of the Federal rule at 30 CFR 800.11(b), which allowed bonding of increments smaller than the entire area to be mined within the initial term of the permit. OSMRE notes that the District Court's ruling was reversed by the U.S. Court of Appeals for the District of Columbia Circuit in an opinion dated January 29, 1988. The opinion stated that incremental and phased bonding, as allowed by 30 CFR 800.11(b) and 800.13(a)(2) are acceptable. Illinois 1800.11(b) is substantively identical to 30 CFR 800.11(b) and is therefore consistent.

28. ISP commented that Illinois regulation 1800.13(a)(2) allows operators to post a bond that would guarantee only specific phases of reclamation within the permit area and the U.S. District Court rejected such phased bonding. Resubmitted Illinois regulations no longer contain 1800.13(a)(2). However, as noted above, the U.S. Court of Appeals reversed the District Court with regard to phased bonding.

29. ISP commented that a provision should be added to 1800.15 requiring the Department to adjust the amount of bond required to be posted by the operator if material damage to the land or structures results from subsidence.

Illinois rule 1800.15 is virtually the same as, and no less effective than, 30 CFR 800.15 which establishes provision for the adjustment of the amount of bond. Therefore 1800.15 is consistent with 30 CFR 800.15.

30. ISP commented that proposed rule 1800.21 should be amended to include provision for real property to be posted as collateral bond. Illinois, however, notes that it is opposed to bonds which may require time and effort to convert to cash and has therefore not provided for real property collateral bonds. This is consistent with 30 CFR 800.21.

31. ISP commented that proposed 1800.50(a) dealing with forfeiture of bonds should be changed to require forfeiture of the bond for the entire permit area. The Federal counterpart allows for partial or incremental forfeiture and thus Illinois 1800.50(a) is consistent with 30 CFR 800.50(a).

32. ISP commented that proposed 1800.50(f) should be deleted since it allows operators who have forfeited bond to be issued future permits if the land for which the bond has been forfeited has been reclaimed without cost to the State. Illinois notes that section 6.07(e) of the State Act provides that any operator against whom forfeiture proceedings have been required shall not be issued a permit for further mining in Illinois unless he provides assurances satisfactory to the Department that such proceedings will not again become necessary. The assurances satisfactory to the Department are set forth in section 1800.50(f) of this regulation and as resubmitted now require all prior violations to the State Act attributable to the permit applicant to have been corrected. OSMRE finds this provision consistent with the Federal regulations.

33. ISP commented that proposed 1815.15(d) should be revised to require topsoil to be removed, stored and redistributed on areas disturbed by coal exploration activitites as necessary to assure successful revegetation. 30 CFR 815.15(d) requires topsoil to be removed, stored and redistributed as necessary to assure successful revegetation or as required by the regulatory authority. Illinois 1815.15(d) specifies removal unless the operator can demonstrate that topsoil will not be affected by excessive erosion, compaction and contamination. Illinois 1815.15(d) also specifies what must be demonstrated as required in 30 CFR 815.15(d) and is therefore consistent with the Federal rule.

34. ISP commented that 1816.22(a)(2) and 1817.22(a)(2) should be changed to require that, if topsoil is less than six

inches thick, the operator shall remove a six-inch layer that includes the A horizon and the unconsolidated materials immediately below or the A horizon and all unconsolidated material if the total available is less than six inches and treat the mixture as topsoil. Resubmitted Illinois regulations 1816.22(a)(2) and 1817.22(a)(2) have been revised to require that at least six inches of top material be removed unless a substitute or supplement is approved. Revised 1816.22(a)(2) and 1817.22(a)(2) are thus consistent with and no less effective than the Federal regulations.

35. ISP commented that proposed rules 1816.22(a)(3) and 1817.22(a)(3) should be changed to read: "The Department may choose not to require the removal of topsoil for minor disturbances . . ." The suggested change would make the Illinois regulations identical to 30 CFR 816.22(a)(3) and 817.22(a)(3). Illinois has chosen to retain the proposed version which establishes that the Department will not require the removal of topsoil for minor disturbances. The Federal rules allow topsoil on areas of minor disturbances not to be saved. OSMRE finds the Illinois choice consistent with the Federal regulations.

36. ISPO commented that proposed 1816.22(a)(3)(B) and 1817.22(a)(3)(B) should be revised to include the phrase "and will not degrade the quality or limit the future use of the soil". Illinois has added the phrase to resubmitted 1816.22(a)(3)(B) and 1817.22(a)(3)(B).

37. ISP commented that 1816.22(a)(4) and 1817.22(a)(4) should be changed to require that all material to be removed shall be removed after the vegetative cover that would interfere with its use is cleared. Illinois rules are exactly the same as the Federal rules in this case and no change is necessary.

38. ISP commented that 1816.22(b) and 1817.22(b) governing topsoil substitutes should be revised to clarify that plans for topsoil substitutes or supplements must be considered significant revisions subject to the public review provision of 1773 and 1774. ISP also indicated that the former Illinois language at 1816.22(e) which is being repealed should be included to describe what proof will be required for the Department to approve a topsoil substitution plan. Resubmitted 1816.22(b) and 1817.22(b) have been revised to specify that, when the extent of area of topsoil substitute or supplement is less than ten percent of the permit area or 50 acres, whichever is less, and the land is not prime farmland, then the change can be considered an insignificant permit revision. The regulations now also specify that the demonstration shall be based on that required pursuant to 1774.13(b)(2) and 1784.13(b)(4). Thus resubmitted regulations are consistent with the Federal regulations.

39. ISP commented that proposed 1816.22(c)(2)(C) and 1817.22(c)(2)(C) governing protection of stockpiled materials should be revised by deleting or defining "or through other measures approved by the Department." ISP says the Department must provide the criteria it will use to evaluate other measures. In its resubmitted 1816.22(c)(2)(C) and 1817.22(c)(2)(C) Illinois has added the wording "equally effective in controlling erosion" to clarify that other measures will be judged compared to vegetation for controlling soil loss from stockpiles. Illinois stated that such examples might include heavy mulching, berms and chemical binders which also control soil loss. OSMRE finds 1816.22(c)(2)(C) and 1817.22(c)(2)(C) consistent with the Federal regulations.

40. ISP commented that proposed 1816.22(c)(3) and 1817.22(c)(3), which allow materials removed under paragraph (a)(1) to be temporarily distributed at an approved site, should be deleted. ISP acknowledged that the proposed regulations mirrored Federal regulations but claimed the practice was unproven. Illinois has regained the provision and explains in the Administrative Record that the regulations provide adequate consideration for trade-offs between long-term stockpiling and thinner activity managed distribution for agriculture. OSMRE finds the State provision consistent with Federal regulations.

41. ISP commented that proposed 1816.41(c)(1) and 1817.41(c)(1) pertaining to gound water monitoring should be changed to require additional monitoring. In resubmitted 1816.41(c)(1) and 1817.41(c)(1) Illinois has added "If unanticipated conditions develop, or if any approved operation or reclamation plan is modified or revised such that the current monitoring program would not detect possible adverse impacts to the hydrologic balance as a result of the change, then the Department shall require additional monitoring." Thus, Illinois has clarified when additional monitoring shall be required. These provisions are consistent with the Federal regulations.

42. ISP commented that proposed 1816.41(c)(2) and 1817.41(c)(2) should be revised to require that a water violation be reported in 24 hours instead of five days as proposed. Resubmitted 1816.41(c)(2) provides exactly the same reporting requirement as the Federal rule in this case and no change is necessary.

43. ISP commented that proposed 1816.41(e)(1) should be changed to read "* * * the Department shall require additional monitoring * * *"; and the word "neceessary"' should be deleted at the end of the subsection. Resubmitted 1816.41(e)(1) has incorporated these changes, which are consistent with the Federal regulations.

44. ISP commented that proposed 1816.41(e)(2) and 1817.41(e)(2) should be revised to require the reporting of a violation within 24 hours. Under 30 CFR 816.41(e)(2) and 817.41(e)(2), where the analysis of any surface water sample indicates non-compliance with the permit conditions, the operator shall promptly notify the regulatory authority. Illinois has retained five days for its time limit. The Department states that five days, which was the time in the existing regulations, has worked well. OSMRE finds the "within five days" requirements consistent with the Federal regulation which requires prompt notification.

45. ISP commented that proposed 1816.41(g) and 1817.41(g) should be changed to read "with prior approval of the Department, wells may be transferred to the surface owner of the lands where the well is located for future use." Resubmitted 1816.41(g) and 1817.41(g) have addressed this concern and are the same as 30 CFR 816.41(g) and 817.41(g).

46. ISP commented with regard to 1816.41(i)(1)(c) and 1817.41(h)(1)(c) that, if the Department is going to allow exemptions to pH and suspended solids limits, the language "* * * so long as they will not result in any adverse impacts to the hydrologic balance * * *" should be maintained at a minimum. ISP also commented the Department must adopt standards of proof that will be required for making a "no adverse impact" finding.

30 CFR 816.41(i)(1)(iii) allows pH and total suspended-solids limitations to be exceeded if approved by the regulatory authority. Resubmitted Illinois rules 1816.41(i)(1)(c) and 1817.41(h)(1)(c) allow these limitations to be exceeded as long as they will not result in any adverse impacts to the hydrologic balance. Thus the resubmitted rules are consistent with the Federal rules.

47. ISP commented that the scope of rules 1816.43(a)(3) and 1817.43(a)(3) must be clarified because the Illinois rules refer to restoration of permanent diversions or stream channels prior to removal of temporary diversions whereas 30 CFR 816.43(a)(3) and 817.43(a)(3) refer to restoration of permanent diversions or stream channels after removal of temporary

diversions. Resubmitted rules 1816.43(a)(3) and 1817.43(a)(3) use the word "prior" to emphasize that all permanent diversions or stream channels are to be established before removal of temporary structures, which is consistent with the Federal rules.

48. ISP commented that proposed rules 1816.43(a)(4)(A) and 1817.43(a)(4)(A) refer to existing 1816.72(b)(4) and its counterpart in 1817, which have been deleted in the proposed rules. Resubmitted rules 1816.43(a)(4)(A) and 1817.43(a)(4)(A) have deleted references to existing 1816.72(b)(4) and its counterpart in 1817 and they are consistent with the Federal rules.

49. ISP commented that proposed rules 1816.43(a)(5) and 1817.43(a)(5) must be changed to include protection from additional flooding outside the permit area or damage to crops and other vegetation because the purpose of the diversion standards is to prevent adverse impacts off-site as well as in the permit area. Language found in current sections 1816.43(h) and 1817.43(h) has been placed in section 1816.43(a)(5) and 1817.43(a)(5) in the resubmitted regulations. The language is specific in that the public health or environment may not be endangered. In addition, resubmitted regulations 1816.43(a)(1) and 1817.43(a)(1) require that diversions be designed to prevent material damage outside the permit area and resubmitted regulations 1816.43(a)(2) and 1817.43(a)(2) require that diversions protect against flooding and resultant damage to life and property. These regulations provide sufficient requirements to prevent adverse off-site impacts and they are consistent with Federal rules.

50. ISP commented that the phrase "and will not require maintenance" should be substituted for "will require infrequent maintenance" in proposed rules 1816.43(b)(4) and 1817.43(b)(4). Resubmitted rules 1816.43(b)(4) and 1817.43(b)(4) have deleted the phrase "will require infrequent maintenance" and require that the longitudinal profile of the stream, the channel, and the floodplain be designed and constructed to remain stable. OSMRE finds these changes to be consistent with the Federal rules.

51. ISP commented that proposed and resubmitted rules 1816.46(b)(7) and 1817.46(b)(8) should be deleted because they have no Federal counterpart and the proposed use of sediment ponds as an alternate post-mining land use violates the letter and intent of the Federal and State Acts and does not make good sense as a method for preventing soil erosion. OSMRE notes, however, that retention of sediment ponds can serve to enhance the post-mining environment by helping to prevent the contribution of additional suspended solids to receiving streams and by providing habitat for fish and wildlife adjacent to and in agricultural areas. OSMRE finds Sections 1816.46(b)(7) and 1817.46(b)(8) to be policy statements on retention of sediment ponds as permanent impoundments. As such, they are not inconsistent with the Federal rules.

52. ISP commented that the proposal to add a subsection to Section 1816.43(c) to exempt drainage ditches for pit pumpage, localized precipitation runoff, etc. cannot be adopted. The subsection was deleted and resubmitted Section 1816.43(c) contains no such exemption.

53. ISP commented that proposed Section 1816.46(h) has no Federal counterpart and should be deleted. Proposed section 1816.46(h) has been deleted from resubmitted Section 1816.46.

54. ISP commented that the phrase "not meeting the size or other qualifying criteria of 30 CFR 77.216(a)" should be deleted from proposed rules 1816.49(b)(9) and (c)(2) and 1817.49(b)(9) and (c)(2)". Inclusion of this phrase in the proposed and resubmitted Illinois regulations provides that permanent impoundments meeting the size criteria of 30 CFR 77.216(a) must meet spillway standards specified in the MSHA regulations. Since the MSHA standards are not as specific as these required under 30 CFR 816.49, Illinois must revise 1816.49 (b)(9) and (c)(2) and 1817.49 (b)(9) (c)(2). See finding 21(cc) above.

55. ISP commented that the phrase "not meeting the size or other qualifying criteria of 30 CFR 77.216(a) "should be deleted from proposed rules 1816.49(c)(2) and 1817.49(c)(2). Inclusion of this phrase in Sections 1816.49(c) and 1817.49(c) of the resubmitted rules directs the applicant's attention to the possibility that more stringent standards may have to be met than would otherwise apply. OSMRE finds inclusion of the subject phrase is not inconsistent with the Federal rules.

56. ISP stated that the following language should be deleted from proposed sections 1816.62(a) and 1817.62(a) governing pre-blasting surveys. "Such notification shall not be required for any structure where, in accordance with this section, a survey has been previously requested by the present or a previous resident or the present or a previous owner and the survey has been conducted by the permittee and copies of the survey report have been provided to the owner or resident and the Department". Illinois' resubmitted regulations 1816.62(a) and 1817.62(a) are identical to the Federal counterparts at 816.62(a) and 817.62(a), which do not contain this language.

57. ISP commented that proposed Illinois regulations 1816.62(b) and 1817.62(b) should be changed so that persons desiring pre-blast surveys need notify either the regulatory authority or the operator and not both. Resubmitted regulations 1816.62(b) and 1817.63(b) have retained the requirement that both the regulatory authority and the operator be notified. This requirement helps to assure that requested surveys are conducted promptly and it is not inconsistent with the Federal rules.

58. ISP commented that the following language should be incorporated into section 1816.64(a) concerning blasting schedule limitations. "The area covered, timing and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect public health and safety and welfare". This wording has been included in Illinois' resubmitted regulation 1816.64(a).

59. ISP commented that Illinois should incorporate a time requirement for mailing the blasting schedule to local governments and public utilities in proposed 1816.64(c)(2). The Federal counterpart at 816.64(b)(2) imposes no time requirement on mailing of the blasting schedules to local governments and public utilities.

60. ISP commented that the Department should retain the requirement that the blasting schedule in proposed 1816.64(c)(2) include information about people's right to a pre-blasting survey. Illinois resubmitted the rule consistent with its Federal counterpart.

61. ISP commented that proposed regulations 1816.67(b)(1) and 1817.67(b)(1) should be changed to require the written waiver to be submitted to the Department before blasting. Resubmitted 1816.67(b)(1) and 1817.67(b)(1) have been changed to be consistent with Federal counterparts 30 CFR 816.67(e)(2) and 817.67(e)(2).

62. ISP stated that rules 1816.67(c)(3) and 1817.67(c)(3) governing compliance with blasting limits should be changed to require that "the operator shall conduct periodic monitoring to assure compliance with the limits in this Section". Resubmitted Illinois rules 1816.67(c)(3) and 1817.67(c)(3) state that the Department may require an air blast measurement of any and all blasts, and may specify the location of such measurements. OSMRE finds this requirement allows for proper air blast

monitoring if it should become necessary. The same flexibility is not necessary with regard to changes in ground vibration monitoring from those specified in the permit application. The rules are consistent with Federal rules.

63. ISP commented that proposed regulations 1816.67(e) and 1817.67(e) should be rewritten to include the requirement that "Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements." By cross-referencing 1816.67(h) and 1817.67(h), resubmitted Illinois regulations 1816.67(e) and 1817.67(e) include this requirement and are consistent with Federal rules.

64. ISP commented that proposed regulations 1816.68(a)(3) and 1817.68(a)(3) should be changed to require the name, signature, and certification number of the blaster conducting the blast. Resubmitted regulations 1816.68(a)(3) and 1817.68(a)(3) are identical to Federal counterparts 816.68(c) and 817.68(c).

65. ISP commented that proposed regulations 1816.68(a) and 1817.68(a) concerning blasting records should include the items found at 30 CFR 816.68(e), weather conditions, and 816.68(n), mats or other protection used. Resubmitted regulations 1816.68(a) and 1817.68(a) require the inclusion of wind velocity and direction in blasting records. OSMRE finds the resubmitted Illinois regulations sufficient to determine compliance with the performance standards which Illinois blasters must meet. Therefore, the regulations as resubmitted are not inconsistent with Federal regulations.

66. ISP commented that proposed regulations 1816.133(a) and 1817.133(a) should be changed to read: "All affected land shall be restored in a timely manner to a condition * * *." Resubmitted regulations 1816.133(a) and 1817.133(a) state "all disturbed areas shall be restored in timely manner to a condition capable of supporting * * *." OSMRE finds the resubmitted rules consistent with the Federal regulations.

67. ISP commented that there is no provision under the Federal Act and rules for approving changes in the pre-mining capability and potential uses of land, except as higher or better uses under the alternative post-mining land provisions. If the proposed alternative is not a higher or better use, it cannot be approved. ISP therefore recommended that the proposed phrase allowing changes in the total acreage from one land use to another be deleted.

30 CFR 816.133(a) clearly allows premining to postmining land use changes, but specifies that premining capability must be restored or made higher or better. Illinois resubmitted 1816.133 which clearly requires all disturbed areas to be restored to a condition capable of supporting the uses which they were capable of supporting prior to any mining or higher or better uses. Thus, resubmitted 1816.133 is consistent with 30 CFR 816.133.

68. ISP commented that proposed regulations 1816.133 and 1817.133, concerning variances from approximate original contour, should be changed to add the language found at 30 CFR 816.133(d). The Federal requirement at 30 CFR 816.133(d) has been remanded in *In Re (II), supra*, and the requested changes are not necessary.

69. ISP commented that proposed regulation 1817.22(c)(2), concerning topsoil storage, should be modified by adding "and" at the end of (c)(2)(c). This change was adopted in resubmitted regulation 1817.22(c)(2)(c).

70. ISP commented that proposed regulation 1817.22(e) should be modified by adding 1817.117 to the list of revegetation requirements with which the covered activity must comply. Omission of Section 1817.117 was a typographical error. Illinois resubmitted 1817.22(e) to include 1817.117 in the list of revegetation requirements with which subsoil segregation must comply.

71. ISP stated that Illinois must define the term "underground mining and reclamation activities" used in establishing the scope of proposed regulation 1817.41(a). "Underground mining activities" and "reclamation" are defined in Section 1701.5 and carry the same meaning when used in 1817.41(a). Definition of these terms in 1817.41(a) would be redundant.

72. ISP commented that additional wording concerning groundwater protection should be added to proposed regulation 1817.41(b). OSMRE has removed 30 CFR 817.41(b)(2); therefore, the requested change in wording is not necessary for the Illinois regulation to be no less effective than the Federal counterpart.

73. ISP commented that proposed regulation 1817.64 should be changed to read the same as section 1816.64 concerning surface blasting. Illinois resubmitted regulation 1817.64 to be consistent with the Federal rule.

74. ISP commented that proposed regulation 1817.71(j)(1) should have the following wording added: "the report shall include appearances of instability, structural weakness and other hazardous conditions". Resubmitted 1817.71(j)(1) includes this language and OSMRE finds the regulation consistent with the Federal rule.

75. ISP submitted multiple comments supporting modification to the State's proposed 1817.122(c) governing the operator's responsibilities for correction of damages to structures and the land surface by planned subsidence. ISP strongly recommended that operators be required to submit written agreements with affected landowners prior to causing subsidence. The Federal regulations at 30 CFR 817.122 do not require such agreements. OSMRE finds the State's provisions at 187.122 for correction of material damage caused by subsidence to be consistent with the Federal regulations.

76. ISP commented that requirements for public notice contained in proposed 1817.122 governing subsidence control should be changed to specify more clearly the exact time that undermining is to occur and to specify the type of undermining that is planned. Resubmitted 1817.122 has been modified to require the notice to specify the type of mining to be employed. Illinois resubmitted 1817.122 consistent with 30 CFR 817.122 and no further specificity is necessary.

77. ISP submitted multiple comments suggesting modifications to changes proposed by Illinois to Part 1823, which established performance standards for operations on prime farmland. The regulations resubmitted by Illinois on May 22, 1987, no longer propose any change to Illinois' existing Part 1823. Therefore, existing Part 1823 is not subject to this rulemaking. OSMRE did approve certain amendments to Part 1823 on December 10, 1986 (51 FR 44454).

78. ISP stated that the wording of proposed regulation 1825.14(a) governing soil replacement on high capability lands should be changed. There is no Federal counterpart of Illinois' Part 1825 covering high capability lands. OSMRE finds the regulation is not inconsistent with the Federal Act or regulations.

79. ISP stated that the Department must substitute "coal processing plants" for "coal preparation plants" in Section 1827. Illinois has defined "coal preparation plant" in Section 1701.5; therefore this change is unnecessary. The revised Illinois definition is consistent with the Federal definition.

80. ISP stated that proposed Sections 1827.1 and 1827.11 must be rewritten to specify that they apply to all activities included in the definition, regardless of whether all of the activities or facilities included in the definition are located or conducted on that site. The Department's regulations include the same jurisdictional reach as their counterpart Federal regulations and are therefore consistent

81. ISP stated that proposed regulation 1840.11(a) should be amended to include language requiring the Department to conduct partial inspections of inactive surface coal mining and reclamation operations. The Department changed section 1840.11(a) by adding the following language to the end of the first sentence: "and shall conduct partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction to ensure enforcement of the approved State program". The regulations, as amended, make the Department's provisions consistent with 30 CFR 843.11(a).

82. ISP stated that Illinois does not define "inactive surface coal mining and reclamation operations" and should adopt a counterpart to 30 CFR 840.11(f). The Department has adopted a subsection (f) to mirror the Federal counterpart at 30 CFR 840.11(f). Section 1840.11, as amended, is consistent with 30 CFR 840.11(f).

83. ISP stated that phrase "carried out during the enforcement of a State program" should be deleted from proposed rule 1843.12(a)(1). The resubmitted Illinois rule has deleted the particulars pertaining to the Federal role since the State lacks jurisdiction over Federal oversight enforcement activities.

84. ISP stated that the regulation 1843.13(a)(4)(A)(i) should be amended by replacing "enforcement of a State" with the phrase "the permanent regulatory" in order to enhance clarity. The State adopted this recommendation and section 1843.13(a)(4)(A)(i) was amended by replacing the words "enforcement of a State" with "the permanent regulatory". This is consistent with the Federal regulations.

85. ISP proposed that the following should be added to 1843.13(f): "(6) any party which intervenes in the proceeding must be informed of the date, time and place of the pre-hearing conference. Any party which intervenes must agree to any settlement in order for such a settlement to revoke a Show Cause Order."

ISP stated it is concerned that a settlement of a Show Cause Order may be reached without the participation and agreement of any intervenors.

As set forth in the administrative record, "an entity allowed to intervene would receive notice of the pre-hearing conference. If the intervenor desired to participate in the proceeding as a full party, assuming intervention was granted, its participation in the settlement process would occur as a matter of course." OSMRE finds this response to be appropriate and the Illinois rules no less effective than the federal rules.

86. ISP stated that proposed 1843.17 should be retained since its repeal would eliminate any requirement in the State program for operators to exhaust administrative remedies prior to seeking relief in State court.

Resubmitted section 1843.17 retains this requirement, which insures that the Illinois rule remains consistent with the Federal regulations.

87. ISP proposed that section 1845.13(b)(4)(B) be changed and that the language in brackets be deleted and replaced by the language in parentheses as follows: If the person to whom the notice or order [abates] (was issued takes extraordinary measures to abate) the violation in the shortest possible time and that abatement was achieved before the time set for abatement, up to [five hundred dollars ($500)] (two hundred dollars ($200)) shall be subtracted from the proposed penalty amount.

The Department is not required to model its "good faith" regulations after the Federal counterpart. The Department is, however, required to insure that an operator's good faith is determined pursuant to Section 518(a) of SMCRA. OSMRE finds that an operator's good faith under the Illinois regulation will be determined in accordance with Section 518(a) of SMCRA. No changes have been made.

88. ISP commented that the initially proposed 1700.15 appeared to be deleted from the resubmitted Illinois regulations and requested that it be reinstated. The lack of 1700.15 in the Illinois resubmittal means existing 1700.15 remains unamended and in effect.

89. ISP commented that the Illinois definition of "affected area" fails to make clear that the area above underground workings is included in this definition. The Illinois definition of affected area need not reference the area over the underground workings because of the shadow area concept. The performance standards at 1817.121 establish standards governing the repair and correction of damage to land and structures in the shadow area caused by subsidence which is consistent with the federal counterparts.

90. ISP requested that the shadow area or area over underground workings be included in the permit area. OSMRE has previously determined that the definition of permit area does not include surface areas above underground workings, which in Illinois is defined as the shadow area. The Illinois definition of permit area is therefore consistent with the Federal rules.

91. ISP commented that the Illinois definition of reclamation should not exclude subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability. Although there is a potential for subsidence-related damage in areas overlying the underground workings, there is no reclamation work required pursuant to 1816.22 and 1816.100 through 1816.116 (topsoiling, backfilling and grading and revegetation). Instead, consistent with the Federal regulations, 1817.121 requires repair and or correction of subsidence-related damages occurring in the shadow area.

92. ISP recommended that the current Illinois regulation 1762.12, additional criteria for lands unsuitable, be reinstated. The Federal counterpart 30 CFR 762.12 is a permissive regulation which provides that States may adopt additional criteria. Based upon the Federal rule, there is no need for Illinois to include this regulation in its program.

93. ISP commented that the proposed and resubmitted Illinois regulation 1764.15 fails to include the opportunity for public comment or a public hearing on the completeness of a lands unsuitable petition. The Federal rule at 30 CFR 764.15(b)(2) specifying that a regulatory authority may provide for such public participation in the completeness of a petition has been removed (52 FR 49322, December 30, 1987). Therefore, the comment is moot.

94. ISP commented that the requirement in resubmitted 1773.13(b)(1) that any person claiming to have an interest which is or may be adversely affected by a permit decision must identify the interest and how the decision will affect the interest should be deleted. OSMRE finds that this requirement is a reasonable addition to expedite the processing of comments and/or objections to permit applications. ISP further requested that, if OSMRE approved the rule as resubmitted, the Office answer several questions concerning how Illinois would respond to several different types of information submitted under this rule. OSMRE cannot predict what action Illinois might take on information submitted and therefore cannot respond to this request. The resubmitted Illinois regulation 1773.13(b)(1) is consistent with 30 CFR 773.13(b)(2), which explicitly establishes the "adversely affected interest" requirement for objections.

95. ISP also stated its concern about resubmitted Illinois regulation 1773.13(c), which requires a person requesting an informal conference to identify his interest and how the interest would be impacted by a permit decision. This regulation is not inconsistent with

the Federal counterpart which establishes the "adversely affected interest" requirement.

96. ISP commented the resubmitted Illinois regulation 1773.14(a), which requires that persons requesting public hearings identify their interest and how this interest would be impacted by a permit decision should be deleted. As with resubmitted Illinois regulations 1773.13(b)(1) and 1773.13(c), OSMRE believes the requirement is a reasonable addition which will expedite the processing of hearing requests and is consistent with the Federal regulations.

97. ISP requested that any change in direction or location of underground mining in an already approved shadow area not be considered an insignificant revision as proposed in resubmitted Illinois rule 1774.13(b)(2)(C). Federal regulations provide that the regulatory authority shall establish guidelines which define the scale or extent or revisions which shall be considered significant revisions. The resubmitted Illinois regulation which addresses underground mining direction and location was approved by OSMRE in the original approval of the State program and remains consistent with current Federal regulations.

98. ISP commented that extensions to shadow areas should not be considered insignificant permit revisions as proposed under Illinois resubmitted rule 1774.13(d). The Illinois regulation provides that only extensions to the shadow area which meet the requirements of an incidental boundary revision will be considered as insignificant. OSMRE finds the rule consistent with the Federal regulation.

99. ISP suggested that resubmitted Illinois regulation 1775.11(e)(4), which provides that an operator shall be allowed to continue operation under an existing permit while a permit decision appeal is pending, be changed to "may be allowed" as provided in the Federal regulation. The permissive language of the Federal rule allows Illinois to exercise this option, provided the operator has a valid permit. This is consistent with 30 CFR 775.11(b)(2)(iv).

100. ISP requested that resubmitted Illinois regulation 1778.15(a) be revised to require a notarized copy of the right-of-entry document rather than a description of the document as required by 30 CFR 778.15(a). The Illinois rule as proposed requires the same information as the Federal rule and therefore is consistent.

In addition, ISP suggested that the language in this rule be amended to require right-of-entry information for surface areas over underground mine workings when planned subsidence techniques are to be used. The Federal counterpart, 30 CFR 778.15(a), does not require right-of-entry information for areas above underground mining areas. Therefore, the Illinois regulation is consistent with the Federal rule.

101. ISP commented that resubmitted Illinois regulation 1779.20(c) fails to include Federal fish and wildlife management, conservation or land management agencies as agencies which will be consulted on fish and wildlife resource information. The approved Illinois program assigns this consultation responsibility to the Illinois Department of Conservation through an approved interagency agreement.

102. ISP requested that Indian burial grounds and other lands where bodies are interred be added to resubmitted Illinois regulations 1779.24(j). The Illinois rule requires that each public or private cemetery be shown on maps submitted with an application. The Illinois definition of cemetery includes any area where human bodies are interred. This would include Indian burial grounds or other areas where human bodies are interred. OSMRE finds the Illinois rule consistent with the Federal regulation.

103. ISP commented that resubmitted Illinois regulation 1780.23(a)(3) fails to include the Federal language requiring submission of all materials needed for approval of the alternative land use. Resubmitted Illinois regulation 1780.23(a)(3) states that, where a land use different from the premining land use is proposed, alternative post-mining land uses may be approved by the Department after consideration of the relationship of the intended uses to existing land use policies and plans and the comments of any owner of the surface and the land management agency having jurisdiction over the land. This requirement coupled with requirements in Illinois 1816.133 that also govern postmining land use are consistent with the Federal regulations governing postmining land use determinations.

104. ISP commented that resubmitted Illinois regulation 1784.13(b)(4) fails to include the provision in 30 CFR 784.13(b)(4) that allows the regulatory authority to require additional information relating to a request for a topsoil substitute material. Since the Federal provision is discretionary, Illinois is not required to incorporate it in its regulations; however, OSMRE interprets this omission as meaning that Illinois has general authority to request additional information where needed.

105. ISP recommended that the current Illinois regulation 1784.14(a) be reinstated. The resubmitted 1784.14 requires all information necessary to insure the protection of groundwater as required by the Federal regulations.

106. ISP recommended that proposed rules 1800.13(b) (3) and (4) be deleted. These rules were not included in the resubmitted Illinois regulations.

107. ISP expanded its comments on the proposed Illinois regulation 1800.15 when commenting on the resubmitted 1800.15. The original comments and the expansion of these comments addressed ISP's belief that bonds should be adjusted to reflect possible subsidence damage. Areas subject to subsidence, unless they are within a permit area, are not required to be bonded. Therefore, a bond adjustment requirement is not necessary to be consistent with the Federal regulations.

108. ISP commented that resubmitted 1815.15(d) should be revised to require topsoil to be removed, stored and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation. 30 CFR 815.15(d) requires topsoil to be removed, stored and redistributed as necessary to assure successful revegetation or as required by the regulatory authority. Illinois rule 1815.15(d) specifies removal unless the operator can demonstrate that topsoil will not be affected by excessive erosion, compaction and contamination. It also lists what must be shown as required in 30 CFR 815.15(d) and is therefore consistent with the Federal rule.

109. ISP supported resubmitted Illinois regulations 1816.22(b)(2) and 1817.22(b)(2), which provide guidance on how decisions will be made as to whether a request for a topsoil substitution is an insignificant or significant revision. ISP did object to the portion of the rule which automatically exempted non-prime farmland soils. As provided in 30 CFR 774.13(b)(2), the regulatory authority shall establish guidelines defining significant and insignificant revisions. The resubmitted Illinois regulations at 1816.22(b)(2) and 1817.22(b)(2) have established those guidelines in conformance with the Federal rules.

110. ISP commented that proposed Illinois regulation 1816.46(g) should be included in the resubmitted regulations. OMSRE notes that the inspection requirements contained in proposed 1816.46(g) appear in resubmitted Illinois regulation 1816.49(a)(10). Therefore, Illinois regulations 1816.46 and 1816.49(a) are consistent with the Federal regulations.

111. ISP recommended that proposed Illinois regulation 1816.49(a)(9), which addressed highwalls below water lines

in impoundments, be included only for the limited purposes of impoundments on previously mined areas. The resubmitted regulations no longer contain the provision.

112. ISP requested that proposed Illinois regulation 1816.49(b)(7)(c) be reinstated. Resubmitted 1816.49(a)(7) requires that perimeter slopes be revegetated and current regulation 1816.116 requires successful revegetation prior to bond release. These regulations will insure that perimeter slopes will be properly vegetated and are thus no less effective than the Federal counterpart.

113. ISP commented that, because resubmitted Illinois regulations 1816.49(b)(9) and 1817.49(b)(9) contain the qualifying phrase "not meeting the size or other criteria of 30 CFR 77.216(a)," that certain impoundments will not meet required standards. Resubmitted Illinois regulations 1816.49(a)(1) and 1817.49(a)(1) require that those impoundments which do meet the size requirements of 30 CFR 77.216(a) utilize the standards in 30 CFR 77.216 which imposes a more general spillway design requirement than does 30 CFR 816.49(b)(7). Therefore, Illinois must revise 1816.49(b)(9) and (c)(2) and 1817.49(b)(9) and (c)(2) to cover all impoundments consistent with 30 CFR 816.49 and 817.49. See finding 22(cc).

114. ISP identified a typographical error in resubmitted 1816.67(e) and 1817.67(e) in which a qualifying "or" was omitted. Illinois has been notified of this omission and will correct the error. OSMRE is interpreting these rules to include the omitted language and thus finds the Illinois rule, as interpreted in this approval, no less effective than the Federal counterpart.

115. ISP identified an error in resubmitted Illinois regulations 1816.83(a)(3) and 1817.83(a)(3) which incorrectly referenced 1816.73(1)(2). The correct references are 1816.71(k)(1)(2) and 1817.71(k)(1)(2). The State has been notified of this error and will correct the references.

116. ISP commented that resubmitted Illinois regulation 1816.106(a)(1) would require permitting of reasonably available spoil from the previous mining operations only in the context of 30 CFR 816.106(a)(1), which makes it clear that all reasonably available spoil in the immediate vicinity should be included in the permit area. Resubmitted Illinois regulations require that all affected areas be permitted. Any spoil area to be utilized falls under the definition of affected area and would therefore be permitted under Illinois regulations.

117. ISP recommended that resubmitted Illinois regulation 1817.71(k) be revised to include language which makes it clear that coal processing waste cannot be disposed of in head of hollow or valley fills. The Illinois regulation is the same as 30 CFR 817.71(i), both of which allow disposal of coal mine waste in excess spoil fills under certain specified conditions.

118. ISP commented that the shadow area should be added to 1817.97(b) as an area from which an operator would be required to report any threatened or endangered species. The Federal regulations do not require such notification beyond the permit area. Therefore, the Illinois regulation is consistent with the Federal rules.

119. ISP objected to the inclusion of Soil Conservation Service soil compaction standards, which are only in the proposed stage of rulemaking, in resubmitted regulation 1825.14(e), which addresses high capability lands. Section 1825 is an Illinois regulation with no Federal counterpart. Therefore, Illinois may adopt any standard which does not conflict with a Federal regulation.

120. ISP commented that resubmitted Illinois regulation 1840.14(c)(2) restricts the mailing of records free of charge to a requester to documents ten pages or less in length.

The Federal rule at 30 CFR 840.14(c) specifies that the regulatory authority may comply with the availability of records requirement by either making such records available for inspection at a Federal, State or local government office in the county in which the mine is located or by supplying them to the requester by mail. Illinois complies with the first option by filing copies of records in the county courthouse. Therefore, if Illinois also wishes to supply copies by mail, it may do so under whatever conditions it wishes to establish.

121. ISP commented that resubmitted regulation 1843.12(a) would allow State inspectors to visit mine sites and not issue a violation on the grounds that the inspection was being conducted for purposes other than enforcement of the State program. As proposed and resubmitted, this rule has been revised to delete language in the existing program pertaining only to Federal oversight inspections; therefore, the Director finds ISP's allegation to be unfounded. The amended rule contains enforcement provisions consistent with those of 30 CFR 843.12.

122. Old Ben Coal Company ("Old Ben") provided extensive legal arguments objecting to resubmitted Illinois regulation 1817.121(c)(2), which provides for the repair of and/or compensation for subsidence damage to structures. In response, the Director notes that 30 CFR 817.121(c) requires that subsidence damage to structures be covered to the extent required under State law. Illinois has determined that structures are protected in Illinois and resubmitted Illinois regulation 1817.121(c)(2) reflects this determination. This requirement is consistent with the Federal regulations.

123. Old Ben commented that resubmitted regulation 1817.122, providing for a six-month subsidence notice would require information not required by Federal law or regulation. The Illinois regulation includes all of the information required by Federal regulations and is therefore consistent with these regulations.

124. Old Ben objected to the inclusion of "surface and underground agricultural drainage systems" to the introductory paragraph of resubmitted Illinois regulation 1784.20. The introductory paragraph of 1784.20 contains all of the information required by the Federal regulations and is therefore consistent with the Federal rules.

125. Old Ben recommended that resubmitted Illinois regulation 1784.20(f) be revised to include the phrase "to the extent required under State law". Because Illinois law provides for the protection of structures, this phrase, which is included in the Federal rule, is not needed.

126. Old Ben requested that the second sentence in resubmitted Illinois regulation 1817.22(a)(1) be deleted. It was Old Ben's opinion that this provision would require an operator to upgrade topsoil quality. The Illinois regulation is the same as 30 CFR 817.22(a)(ii) and is consistent with the Federal rule.

127. Old Ben commented that the language "* * * and the resulting soil medium is the best available in the area to support vegetation" contained in resubmitted Illinois regulation 1817.22(b)(1) is superfluous. This language is the same as the Federal regulation at 30 CFR 817.22(b).

128. Old Ben recommended that resubmitted Illinois regulation 1817.41(e)(2) requiring that surface water monitoring data be submitted to the regulatory authority be deleted in deference to the requirement to send the same data to the State Environmental Protection Agency. This Illinois requirement allows mine operators to fulfill the surface monitoring requirements of SMCRA with the submission of NPDES reports already required by other laws and therefore reduces duplication. The Illinois regulation is consistent with the Federal regulations.

129. Old Ben commented that the Illinois definition of siltation structure within resubmitted regulation 1817.46(a)(1) should be expanded to include the additional structures contained in the 1701.5 definition of siltation structures. Rule 1817.46(a)(1) covers other treatment facilities, which would include those additional structures recommended by Old Ben. The Illinois regulation is consistent with Federal rules without the suggested additional language.

130. Old Ben requested that resubmitted 1817.46(c)(2)(B) be revised to allow grass or earth lined single spillways if it can be shown that the spillway velocity will not contribute to erosion of the spillway. The Illinois regulation is the same as the Federal counterpart and is therefore acceptable as resubmitted.

131. Old Ben commented that resubmitted Illinois regulations 1817.49 (b)(7) and (b)(8) are not required by Federal regulations and should be deleted. This paragraph, which provides additional guidance on the design of impoundments, is not inconsistent with the Federal regulations and therefore is acceptable as resubmitted.

132. Old Ben objected to the inclusion in resubmitted Illinois regulation 1817.71(h) of language making terracing mandatory once a fill height exceeds 40 feet. 30 CFR 817.71(e)(3) provides that terraces may be constructed if required. Illinois has determined that terraces are required once the fill height reaches 40 feet. This requirement is not inconsistent with the Federal regulations.

133. Old Ben commented that resubmitted regulation 1817.100 contains the phrases "subsidence control" and "subsidence control efforts" which are not included in the comparable Federal rule. The Federal rule at 30 CFR 1817.100 references areas affected by surface impacts incident to an underground coal mine and requires the surface impacts of underground mines to be addressed as contemporaneously as other surface impacts. Therefore, the Illinois regulation is consistent with the Federal regulation.

134. Old Ben requested that "* * * except as specified in section 1773.11(b)(1)(C) * * *" be added to resubmitted 1700.11(c), which addresses applicability of the Illinois regulations. The Director finds that there is no conflict or inconsistency between the dates contained in the two cited State rules, and that there is no need or reason to adopt the suggested change.

135. Old Ben commented that resubmitted Illinois regulation 1761.11(e) goes beyond the Federal rule by prohibiting mining within 300 feet of dwellings under construction or contract at the time of public notice. The Director finds that the Illinois regulation is not inconsistent with the Federal rule by protecting additional present or planned structures.

136. Old Ben commented that resubmitted Illinois regulation 1764.15 fails to include language similar to that of 30 CFR 764.15 allowing the suspension of petitions to designate lands unsuitable if there is no real or foreseeable potential for surface coal mining operations in the area. These Federal provisions were suspended by the U.S. District Court in *In re: Permanent II, supra* and removed on December 30, 1987. Therefore, there is no basis for inclusion of similar language in the Illinois regulation.

137. Old Ben requested several changes in resubmitted Illinois regulation 1764.19 to remove the State's basis for conditioning future mining operations in all or part of an area subject to a lands unsuitable petition. The current Illinois regulation [1764.19(b)] also contains this conditioning clause, which was determined to be consistent with the same Federal regulations at the time of program approval. Therefore, the State regulation need not be changed.

138. Old Ben suggested that the Illinois definition of "valid existing rights" contained within resubmitted regulation 1701.5 be suspended until such time as OSMRE responds to the U.S. District Court's remand of the comparable Federal definition. As discussed in Finding 2(b), the Director is deferring a decision on the State definition.

139. Old Ben objected to resubmitted Illinois regulation 1773.11(b)(1)(C), which requires that mining operations under an initial program permit comply with 62 IAC Parts 1800 through 1850, the permanent program bonding and performance standards, on or after February 1, 1983. In response, the Director notes that Section 505(b) of SMCRA specifies that any State law or regulation which provides more stringent environmental controls and regulations than the Federal requirements shall not be construed as being inconsistent with those requirements.

140. Old Ben objected to resubmitted Illinois regulation 1774.15, which establishes a minimum of 180 days before expiration of a permit as the deadline for filing for renewal. The Federal rule at 30 CFR 774.15 provides that the application for renewal must be submitted at least 120 days prior to expiration. States are free to choose any length of time equal to or in excess of 120 days.

141. Old Ben requested deletion of the "shadow area" from resubmitted Illinois regulation 1778.15, which defines the area for which right-of-entry information is required. The resubmitted rule states that this information is not required for the shadow area if the surface estate will not be disturbed by surface facilities and related surface activities. The corresponding Federal rule at 30 CFR 778.15 requires right-of-entry information for the same areas as the Illinois rule. Therefore the resubmitted regulation is consistent with the Federal rule.

142. Old Ben objected to the inclusion of the shadow area in resubmitted Illinois regulation 1783.11. The Federal counterpart at 30 CFR 783.11 reference adjacent areas which may be affected or impacted by the proposed underground mining activities. The shadow area concept utilized by Illinois describes the surface area over underground mining operations and is consistent with the Federal regulation.

143. Old Ben commented that resubmitted Illinois regulation 1783.12 also included the shadow area as an area for which general environmental resources information must be provided. As stated in the previous response, the use by Illinois of the shadow area to describe the area above underground mining operations is an acceptable procedure and its use in the various informational requirements of the program is consistent with the Federal regulations.

144. Old Ben further objected to inclusion of the shadow area in resubmitted Illinois regulations 1783.22—Land Use Information and 1783.23—Maps: General Requirements. As stated in responses to prior Old Ben comments, use of the shadow area for the purpose of further defining the area for which information must be gathered for a surface coal mining and reclamation permit is consistent with the Federal regulations.

145. Old Ben pointed out that resubmitted Illinois regulation 1784.14(i)(3) requires submission to the regulatory authority of surface water monitoring reports required by the Illinois Environmental Protection Agency (IEPA), but that such reports are not required by the Federal analog. The Illinois regulation makes it clear that NPDES and other monitoring reports required by IEPA are considered a part of the monitoring system required pursuant to the surface mining permit. This procedure is consistent with the Federal requirement.

146. Old Ben commented that resubmitted Illinois regulation 1843.11 contains additional language not specifically included in the Federal counterpart. The additional Illinois language is permitted under the Federal language in 30 CFR 843.11(a)(3), which allows the regulatory authority to impose affirmative obligations. As resubmitted, the Illinois regulation is consistent with the Federal counterpart.

147. The Association of Illinois Soil and Water Conservation Districts (AISWCD) submitted a large number of comments on the proposed Illinois regulations. With the following exceptions, the comments are similar to comments submitted by the Illinois South Project (ISP) and are addressed with those comments.

148. AISWCD commented that proposed Illinois regulation 1784.20 should include the phrase "including surface and underground agricultural drainage systems". The resubmitted Illinois regulations include this phrase.

149. The Illinois Historic Preservation Agency (IHPA) submitted numerous comments concerning Illinois regulations which address archeological and historic resources. On June 9, 1987, OSMRE notified the State of the changes required as a result of recently approved Federal regulations concerning historic resources. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required changes. IHPA, other agencies and the public have been provided opportunity to comment on these proposals. OSMRE will shortly announce its decision concerning these amendments.

150. IHPA commented that resubmitted Illinois regulation 1700.18(a), which describes the Surface Mining Advisory Council, fails to include a representative of the historic/cultural resources community. There is no Federal counterpart for this advisory council; therefore, there are no Federal requirements governing the makeup of this State Council.

151. IHPA requested clarification of the term "historic designation" as it is used in the resubmitted Illinois regulation 1701.5 definition of "historic lands". This definition is the same as the definition contained in Federal rule at 30 CFR 762.5. The Illinois rule as resubmitted is consistent with the Federal rule.

152. IHPA requested that the resubmitted Illinois definition of "person" contained in 1701.5 include the term "historic" as one of the values. The Illinois definition is the same as the Federal definition and therefore is consistent with 30 CFR 701.5.

153. IHPA commented that resubmitted Illinois regulation 1764.23(a) should exempt all archeological sites from public disclosure. The Illinois rules are identical to the Federal counterpart, 30 CFR 764.23(a), and therefore are consistent with the Federal regulations.

154. IHPA requested that the word "known" be dropped from resubmitted Illinois regulation 1772.12(b). The Illinois regulation is identical to the Federal rule and the request is therefore rejected. The remainder of IHPA comments on this section recommended the addition of the phrase "pursuant to the National Historic Preservation Act of 1966". OSMRE believes this to be redundant.

155. IHPA suggested adding "sites eligible for listing" to resubmitted Illinois regulation 1772.12(d)(2)(C). The regulation is identical to the Federal rule and therefore consistent.

156. IHPA commented on Illinois resubmitted regulation 1773.15(c), which concerns the written findings required for historic properties. The Director has notified the State that an additional revision is necessary. By letter dated September 16, 1987, IDMM submitted additional proposed regulations amending 1773.15(c) to require a written finding for historic properties.

157. IHPA requested that the word "known" be deleted from resubmitted Illinois regulation 1783.24(i). The use of the term "known" is consistent in each case with the Federal counterpart and is therefore approved.

VI. Director's Decision

Based on the above findings, the Director is approving the amendments to 62 IAC Parts 1700 to 1845, as submitted by Illinois on May 22, 1987, except for those provisions discussed in Findings 2(b), 2(c), and 4(b) concerning valid existing rights, previously mined areas and protection of privately owned sites listed on the National Register of Historic Places. As provided by 30 CFR 732.17(a) and (g), any provisions that are not approved by the Director may not be implemented as part of the Illinois program.

In addition, the Director is requiring that Illinois further amend its program as discussed below:

1. As discussed in Finding 14(f), Illinois must revise 62 IAC 1780.21(f) and 1784.14(e) or otherwise amend its program to require that the determination of probable hydrologic consequences include findings consistent with 30 CFR 780.21(f)(3) and 784.14(e)(3), that it be based on baseline data collected for the permit application, and that each application for a permit revision be reviewed by the regulatory authority to determine whether a new or updated determination is necessary.

2. As discussed in Finding 21(hh), Illinois must revise 62 IAC 1816.49(b)(9) and (c) and 1817.49(b)(9) and (c) or otherwise amend its program to include spillway size requirements for all impoundments consistent with 30 CFR 816.49(b)(7) and (c)(2) and 817.49(b)(7) and (c)(2).

3. As discussed in Finding 4(a), Illinois must further revise 62 IAC 1761.11(a) to include provisions concerning the protection of wild and scenic study river corridors that are no less effective than the Federal rule at 30 CFR 761.11(a).

The Federal rules at 30 CFR Part 913 are being amended to implement this decision. Since, as explained Findings 2(h), 17(h), 21(jj), 21(kk) and 21(ll), this amendment satisfies the requirements of 30 CFR 913.16(a) and (c) through (f), the Director is removing these provisions. However, nothing in this decision negates the need for Illinois to further revise its program in accordance with earlier notifications provided under 30 CFR 732.17(d). This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards without undue delay.

In accordance with 30 CFR 732.17(h)(11)(ii), the Director has, by letter dated July 16, 1987, obtained the concurrence of the U.S. EPA in the approval of the portions of these amendments pertaining to air and water quality standards promulgated under the Clean Air Act (42 U.S.C. 7401 et seq.) and the Clean Water Act (33 U.S.C. 1251 et seq.).

VII. Additional Determinations

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.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, 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, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the

Regulatory Flexibility Act (5 U.S.C. 601 et seq.), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

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

Date: October 12, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. A new paragraph (i) is added to § 913.15 to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(i) The following amendment submitted to OSMRE by Illinois on March 28, 1986, as modified and resubmitted on May 22, 1987, is approved effective October 25, 1988 with the exceptions identified herein and in § 913.17: Revision, addition and repeal, as indicated, of the following parts of Chapter I of Title 62 of the Illinois Administrative Code:

Part 1700—General (revised)
Part 1701—General Definitions (revised), except:
(1) The definition of "valid existing rights" and
(2) The definition of "previously mined area" to the extent that it includes lands subject to the reclamation standards of SMCRA.
Part 1705—Restriction on Financial Interests of State Employees (revised)
Part 1760—General Areas Unsuitable for Mining (repealed)
Part 1761—Areas Designated by Act of Congress (revised), except for those provisions in 1761.11(c) and 1761.12(e)(1) excluding protection for privately owned sites listed on the National Register of Historic Places
Part 1762—Criteria for Designating Areas As Unsuitable for Surface Coal Mining Operations (revised)
Part 1764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations (revised)
Part 1770—General Requirements for Permit and Exploration Procedure Systems under Regulatory Programs (repealed)
Part 1771—General Requirements for Permits and Permit Applications (repealed)
Part 1772—Requirements for Coal Exploration (added)
Part 1773—Requirements for Permits and Permit Processing (added)
Part 1774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights (added)
Part 1775—Administrative and Judicial Review of Decisions (added)
Part 1776—General Requirements for Coal Exploration (repealed)
Part 1777—General Content Requirements for Permit Applications (added)
Part 1778—Permit Applications: Minimum Requirements for Legal, Financial, Compliance, and Related Information (revised)
Part 1779—Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources (revised)
Part 1780—Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan (revised)
Part 1782—Underground Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information (repealed)
Part 1783—Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources (revised)
Part 1784—Underground Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan (revised)
Part 1785—Requirements for Permits for Special Categories of Mining (revised)
Part 1786—Review, Public Participation and Approval and Disapproval of Permit Applications and Permit Terms and Conditions (repealed)
Part 1787—Administrative and Judicial Review of Decisions by Regulatory Authority on Permit Applications (repealed)
Part 1788—Permit Reviews, Revisions and Renewals and Transfer, Sale and Assignment of Rights Granted Under Permits (repealed)
Part 1795—Small Operator Assistance (revised)
Part 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations (revised)
Part 1801—Bonding Requirements for Underground Coal Mines, Coal Processing Plants, Associated Structures, and Other Coal-Related Long-Term Facilities and Structures (repealed)
Part 1805—Amount and Duration of Performance Bond (repealed)
Part 1806—Form, Conditions and Terms of Performance Bonds and Liability Insurance (repealed)
Part 1807—Procedures, Criteria and Schedule for Release of Performance Bond (repealed)
Part 1808—Performance Bond Forfeiture Criteria and Procedures (repealed)
Part 1815—Permanent Program Performance Standards: Coal Exploration (revised)
Part 1816—Permanent Program Performance Standards: Surface Mining Activities (revised)
Part 1817—Permanent Program Performance Standards: Underground Mining Operations (revised)
Part 1818—Special Permanent Program Performance Standards: Concurrent Surface and Underground Mining (repealed)
Part 1819—Special Permanent Program Performance Standards: Auger Mining (revised)
Part 1824—Special Permanent Program Performance Standards: Mountaintop Removal (revised)
Part 1825—Special Permanent Program Performance Standards: Operations on High Capability Lands (revised)
Part 1825—Special Permanent Program Performance Standards: Operations on Steep Slopes (repealed)
Part 1827—Special Permanent Program Performance Standards: Coal Preparation Plants Not Located Within the Permit Area for a Mine (revised)
Part 1828—Special Permanent Program Performance Standards: In Situ Processing (revised)
Part 1840—Department Inspections (revised)
Part 1843—State Enforcement (revised)
Part 1845—Civil Penalties (revised)

3. Section 913.16 is revised to read as follows:

§ 913.16 Required regulatory program amendments.

(a) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1780.21(f) and 1784.14(e) or otherwise propose to amend its program to require that the determination of probable hydrologic consequences include specific findings no less effective than those of 30 CFR 780.21(f)(3) and 784.14(e)(3), that it be based on baseline data collected for the permit application and that each application for a permit revision be reviewed by the regulatory authority to determine whether a new or updated determination is necessary.

(b) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1816.49(b)(9) and (c) and 1817.49(b)(9) and (c) or otherwise propose to amend its program to extend the requirements specifying spillway sizes to all impoundments in a manner no less effective than 30 CFR 816.49(b)(7) and (c)(2) and 817.49(b)(7) and (c)(2).

(c) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1761.11(a) to include provisions concerning protection of wild or scenic study river corridors that are no less effective than the Federal rules at 30 CFR 761.11(a).

4. Section 913.17 is added to read as follows:

§ 913.17 State regulatory program provisions and amendments disapproved.

(a) The proposed definition of "previously mined area" in 62 IAC 1701.5, as submitted by Illinois on May 22, 1987, is disapproved to the extent that it includes lands subject to the reclamation standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(b) In 62 IAC 1761.11(c) and 1761.12(e)(1), as submitted by Illinois on May 22, 1987, the phrase "publicly owned" is disapproved to the extent that it modifies the term "places listed on the National Register of Historic Places" or an equivalent term.

[FR Doc. 88-24483 Filed 10-24-88; 8:45 am]
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federal register

Tuesday
October 25, 1988

Part VI

Department of Commerce

International Trade Administration

Export Trade Certificate of Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application #88-00012.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to National Tooling and Machining Association. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15, CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, on or before November 25, 1988, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Products of the contract tooling and machining industry, including special tools, dies, jigs and fixtures (SIC 3544), machine tool accessories (SIC 3545), metalworking machinery not elsewhere classified (SIC 3549), special industry machinery not elsewhere classified (SIC 3559), industrial patterns (SIC 3565), general industrial machinery not elsewhere classified (SIC 3569), precision machined parts, and machinery, except electrical, not elsewhere classified (SIC 3599).

2. Services

Engineering, design, and related services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

4. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. NTMA and/or one or more of its Members may: a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their products and/or Services or offer their Export Trade facilitation Services through the certified activities of NTMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NTMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. NTMA and/or its Members may enter into agreements Wherein NTMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for products and/or Services in that country or market. In such agreements, (i) NTMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through NTMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. NTMA and/or its Members may exchange and discuss the following types of information: a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and

discussions as to Product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by NTMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about NTMA's or its Members' export operations, including without limitation sales and distribution networks established by NTMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. NTMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by NTMA itself, or by agreement with Members or other parties.

5. NTMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. NTMA and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-members.

7. NTMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign movement or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those member companies of NTMA listed in Appendix A to this notice, which is incorporated herein by reference, and those member companies of NTMA subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

New NTMA members, and current NTMA members not listed in Appendix A, may be incorporated in the Certificate through an abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the NTMA members that desire to become a Member under the Certificate pursuant to the abbreviated amendment procedure, and certifying for each such NTMA member the number of its employees. Notice of the members so identified shall be published in the **Federal Register**. However, NTMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members' effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology, and/or Export Trade Facilitation Services, whether a Member or non-member.

Date: October 19, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs Industries;

Appendix A

Members of Applicant

A & A Grinding Service & Mfg. Co.; A & A Machine Shop, Inc.; A & B Industries, Inc.; A & B Machine; A & B Machine Shop; A & B Tool & Manufacturing Corp.; A & E Manufacturing Corp.; A & E Tool & Die Company; A & H Machine & Tool Company; A & J Enterprises, Inc.; A & K Screw Machine, Inc.; A & M Aircraft; A & M Tool & Die Company, Inc.; A & S Tool & Die Company, Inc.; A to Z Tool & Machine Company; A A A Tool & Die Company, Inc.; A A Engineering Corporation; A A Precisioneering, Inc.; A B & S Tool & Die Company, Inc.; A B A Industries; A B A Tool & Die Company, Inc.; A B C Manufacturing; A B C O Tool & Die, Inc.; A B R Enterprises; A C Engineering; A C Machine & Manufacturing; A C Machine, Inc.; A C S Tool Company, Inc.; A C Tool & Machine Company; A E Cole Die & Engraving; A E Machine Works, Inc.; A F & G Tool & Die Company; A F C Tool Company, Inc.; A G A Precision, Inc.; A Hardiman Machine Company, Inc.; A I Network Corporation; A I P, Inc.; A J & L Tool & Die Company; A L Industries, Inc.; A M & T A M C Precision, Inc.; A M I Industries, Inc.; A M Industries, Inc.; A M Machine Company, Inc.; A M Precision Machining, Inc.; A P Products Company; A R Industries, Inc.; A S C Corporation; A T G, Inc.; A W S Industries, Inc.; A. C. Welding Company; A. F. Roberts, Inc.; A-G Tool & Die; A-Line Tool & Die; A-Quality Machine Products; A-Tron Corporation; A-W Engineering Company, Inc.; A–1 Tool Division (Division of Lovejoy Industries, Inc.); Abbott Machine & Tool, Inc.; Abbott Tool, Inc.; Ability Tool Company; Able Fabricating & Company; Abrams Airborne Manufacturing, Inc.; Absolute Manufacturing; Absolute Precision; Accon Inc.; Accraline, Inc.; Accro Tool Enterprises; Accu-Prompt Manufacturing; Accu-Roll, Inc.; Accu-Tech, Inc.; Accudynamics, Inc.; Accudyne Corporation; Accumet, Inc.; Accurate Grinding Corporation; Accurate Industrial Machining, Inc.; Accurate Machine & Tool Company; Accurate Machine Tool, Inc. (Division of G&S Machine Tool Co.); Accurate Machine, Inc.; Accurate Manufacturing Company; Accurate Manufacturing Company; Accurate Tool Steel, Inc.; Accurite Precision, Inc.; Accutronics, Inc.; Ace Machine Company, Inc.; Ace Precision Industries, Inc.; Ace Precision, Inc.; Ace Specialty Company, Inc.; Ace Tool & Machine, Inc.; Ace Tool & Manufacturing Co., Inc.; Acme Grinding Service, Inc.; Acme Grinding, Inc.; Acra Machine and Engineering, Inc.; Acraloc Corporation; Acro Industries, Inc.; Acro Tool & Die Company, Inc.; Acrodie, Inc.; Actco Tool & Manufacturing Company; Action Die & Tool Inc.; Action Tool & Die; Action Tool & Die Engineering; Active Tool Company; Acu Cut/ Pa, Inc.; Acucut, Inc.; Adams Engineering, Inc.; Adams Machine Shop; Adams Russell

Electronics; Adams Tool & Engineering, Inc.; Adapto, Inc.—Arizona Division (Division of Adapto, Inc.); Adapto, Inc.; Adelmeyer Tool, Inc.; Adept Manufacturing, Inc.; Admar Mold & Engineering, Inc.; Admiral Engineering & Manufacturing; Adron Tool Corporation; Advance Gear & Machine Corp.; Advance Tool & Die Company; Advance Tool Company, Inc.; Advanced Machine Programming; Advanced Machine Service; Advanced Machine Works, Inc.; Advanced Machining Technology, Inc.; Advanced Mold & Tool; Advanced Mold Technology, Inc.; Advanced Products Company; Advanced Techniques Burring, Inc.; Advanced Technologies, Inc.; Advanced Tool & Design, Inc.; Advantage Mold & Design; Advent Tool & Mold Company; Aer-O-Dyne Manufacturing Company; Aerex Manufacturing, Inc.; Aero Components Company; Aero Gear, Inc.; Aero Manufacturers, Inc. (Division of Fleetwood Machine Products, Inc.); Aero Mechanical Engineering, Inc.; Aero Space Engineering, Inc.; Aero Spring & Manufacturing Co, Inc.; Aerodynamic Engineering, Inc.; Aerofab, Inc.; Aeromold Plastics, Inc.; Aerostar Aerospace Manufacturing; AeroSpace Metalmasters, Inc.; Aetna Machine Company; Aggressive Engineering Corp.; Agio Precision Industries, Inc.; Ahaus Tool Company, Inc.; Aide, Inc.; Aim Incorporated; Aimco Precision, Inc.; Aircraft Standards, Inc.; Aircraft Welding & Manufacturing; Airmis Manufacturing, Inc.; Ajax Tool, Inc.; Akromold, Inc.; Akron Steel Fabricators Company; Akron Tool & Die Company, Inc.; Al-Tech; Al's Tool & Die Enterprises; Alabama Tool Company, Inc.; Alart Tool & Die, Inc.; Albert Tool & Die Company, Inc.; Albertson & Hein, Inc.; Albion Machine & Tool Company; Albrecht Tool Die & Manufacturing; Alco Machine Corporation; Alco Manufacturing, Inc.; Aldan, Inc.; Alfa Foundry, Inc.; Alfa Machine & Tool Company, Inc.; Alfred Manufacturing Company; Alfro Custom Manufacturing; Alger Machine Company, Inc.; Alkron Manufacturing Corporation; All Five Tool Company, Inc.; All Mold, Inc.; All Tech Machine & Tool; All Tool Company; All Tools Company; All-Con Tool & Mold, Inc.; All-Pro Machine Company, Inc.; All-Tech Machine & Eng., Inc.; Allegheny Tool & Manufacturing Co.; Allen Aircraft Products, Inc.; Allen Precision Machining Company; Allen-Leonard Industries, Inc.; Alliance Carolina Tool & Mold (Division of Gleason Corporation); Allied Atlantic Industries, Inc.; Allied Mechanical Products; Allied Screw Products, Inc.; Allied Tool & Die Company; Allied Tool & Die Company; Allied Tool & Die, Inc.; Allied Tool & Machine Company; Allied Tools Of Texas; Allis Tool & Machine Corporation; Allmandinger, Inc.; Alloy Machine. & Tool Company, Inc.; Alloy Metal Products; Alloy Tool & Machine, Inc.; Alloy Tool and Engineering; Allstate Tool & Die, Inc.; Almar Mfg. & Engineering, Inc.; Alpa Centerless Products; Alpa Precision Machine Works; Alpha Tool & Machine Company; Alpine Manufacturing, Inc.; Alpine Tool & Die; Alton Products, Inc.; Alton Tool Company, Inc.; Alumni Tool & Die, Inc.; Alves Precision Engineered Products; Amalar; ; Ambox, Inc.; Ambritt Corporation; American Dies, Inc.; American E D M & Tooling, Inc.; American Engraving, Inc.; American Gear & Supply Co., Inc.; American Heller Corporation; American Machine & Gun Drilling, Inc.; American Machine & Supply, Inc.; American Metric Engineering, Inc.; American Micro Products, Inc.; American Mold & Engineering Company; American Mold Corporation; American Precision Machining, Inc.; American Production & Grinding; American Tool & Die; American Tool & Die, Inc.; American Tool & Die, Inc.; American Tool & Engineering Company; American Tool & Gage; American Tool Company; Ameritec Manufacturing Corporation; Ameritech Die & Mold, Inc.; Amherst Tool & Automation; Amity Mold Company; Amkay Machine Products; Amrein Machine Shop, Inc.; Anchor Tool & Die Company; Anco Tool & Die Company, Inc.; Ander Mel, Inc.; Anderson Automatics, Inc.; Anderson Machine; Anderson Machine & Tool; Anderson Precision, Inc.; Anderson Tool & Engineering Company; Andrews Machine Works; Angermeier Industries, Inc.; Animatics Corporation; Anoco Tool & Manufacturing Co., Inc.; Anoplate Corporation; Anro Metals Manufacturing; Anthony Machine; Apex Corporation; Apex Machine Tool Company, Inc.; Apex Tool & Manufacturing, Inc.; Apollo E.D.M. Company; Apollo Precision, Inc.; Apollo Tool Corporation; Aponte Tool & Manufacturing, Inc.; Applied Engineering, Inc.; Applied Machine Technologies, Inc.; Applied Mechanical Energy; Applied Tool & Die Company; Arco Industries, Inc.; Arco Metals Corporation; Aremco, Inc.; Argo Tool Corporation; Argus Manufacturing Company; Aries Industries;

Aries Tool, Inc.; Arizona Carbide Tools, Inc.; Arizona Custom Manufacturing; Arizona Plasma Welding; Arkansas Tool & Die; Arlington Machine & Tool Company; Arma Tool & Die Company, Inc.; Armin Tool & Manufacturing Co. Inc.; Armstrong Pattern & Mold Corp.; Armstrong Technology, Inc.; Arnold Gauge Company; Arro Tool & Die, Inc.; Arrow Grinding, Inc.; Arrow Precision Manufacturing Corp.; Arrow Tool & Gage Company; Arrow Tool, Inc.; Arrowsmith Tool & Die; Art Precision Metal Products, Inc.; Artel Tool Company; Arthur J. Evers Corporation; Artisan Tool & Die Corporation; Artvic, Inc.; Ash Machine Corporation; Asheboro Mold & Design, Inc.; Ashlin Associates, Inc.; Asmat, Inc.; Associated Design & Manufacturing; Associated Electro-Mechanics, Inc.; Associated Machine Company, Inc.; Associated Machine Technology; Associated Machinecraft Corporation; Associated Tool Company, Inc.; Astra Tool & Instrument, Corp.; Astro Machine Works Inc.; Atec Tool & Engineering; Atec, Inc.; Athens Industries; Athens Tool & Die, Inc.; Atkins Tool Company; Atlantic Aircraft Tool Company; Atlantic Alloys, Inc.; Atlantic Tool & Die Company; Atlas Die & Manufacturing Company; Atlas Machine & Supply, Inc.; Atlas Machine Company, Inc.; Atlas Machine, Inc.; Atlas Tool, Inc.; Atols Tool & Mold Corporation; Attra Industries, Inc.; Atwood Tool & Die, Inc.; Aul in the Family Tool & Die, Inc.; Austin Continental Industries, Inc.; Austin Dies, Inc.; Austin Precision Tool Company; Austinburg Machine, Inc.; Austro Mold, Inc.; Autodie Corporation; Automate Associates, Inc.; Automated Tool & Manufacturing; Automatic Precision Welding and Fabricating, Inc.; Automation Tool & Die, Inc.; Automation Tool Company; Autrey Steel & Machine; Avant Tool & Die, Inc.; Avion Tool Corporation; Avion Tool Manufacture; Axis Precision Industries; Ay Machine Tool & Die, Inc.; Ayers Gear & Machine; Azbill Tool & Die, Inc.; AM-Tec, Inc.; B & A Design; B & B Machine & Grinding Service; B & B Manufacturing Company; B & B Manufacturing Company; B & B Precision Tools, Inc.; B & B Precision, Inc.; B & B Tool & Die Company, Inc.; B & B Tool & Die, Inc.; B & B Tool Company; B & E Tool & Mfg. Co., Inc.; B & E Tool Company, Inc.; B & G Machine Company; B & G Machine Products; B & G Quality Machine & Tool; B & G Tool & Die Company, Inc.; B & H Machine, Inc.; B & H Tool & Machine Corporation; B & L Tool & Machine Company; B & R Gear Company; B & R Machine & Tool Corporation; B & T Tool & Die Company; B & W Tool & Die, Inc.; B & Z Manufacturing Company; B A K Precision Industries; B F Industries, Inc.; B G Instrument Corporation; B H

Aircraft Company, Inc.; B H Instrument Company, Inc.; B I K Corporation; B J Williams Co.; B T & M; B Z Engineering; B. Radtke & Sons, Inc.; B. T. C. Production; B-W Grinding Service, Inc.; Babbitt Bearing, Inc.; Bachman Machine Company, Inc.; Bachmann Precision Machine; Badger Tool & Die; Bahrs Die & Stamping Company; Bailey Tool & Manufacturing Company; Bair Tool & Mold, Inc.; Baker Hill Industries, Inc.; Baker Machine & Tool; Ballard Machine Tool Service; Ballos Precision Machine; Banbury Precision; Banner Machine Company, Inc.; Banner Tool & Die, Inc.; Barco Manufacturing, Inc.; Barlag Tool; Barroncast, Inc.; Barton Tool Engineering; Basic Industries; Basic VI; Basil-Walker Tool Company, Inc.; Basilius Tool Co.; Bassett Tool & Machine; Bateman Manufacturing Co., Inc.; Baumann Engineering; Baumbach Machine, Inc.; Bawden Industries, Inc.; Bay Bar Products, Inc.; Bay City Boring & Machine; Bay Swiss Manufacturing Co., Inc.; Baytown Ace Machine Company, Inc.; Beacon Tool Company, Inc.; Beamco, Inc.; Beaulieu Tool & Die Co., Inc.; Beaver Tool & Machine Company; Bechdon Company, Inc.; Bechler Cams, Inc.; Becker, Inc.; Becksted Machine Shop; Beckwith Grinding, Inc.; Behrens Manufacturing, Inc.; Bel-Kur; Bel-Mar Products Corporation; Belgian Screw Machine Products, Inc.; Bell Engineering, Inc.; Bell Tool, Inc.; Ben-Mer Tool & Machine.; Benda Tool & Model Works; Bender Machine, Inc.; Bendon Gear & Machine; Bennett Tool & Die Company; Berg Tool & Machine Company, Inc.; Berkshire Industries, Inc.; Berlin Manufacturing Co. Inc.; Bernal Rotary Systems, Inc.; Bernhard Knust Company, Inc.; Bertram Tool & Machine Co., Inc.; Beryllium Manufacturing Company; Bess TESTLAB INC.; Best Industries, Inc.; Best Tool & Manufacturing Co., Inc.; Beta Machine & Tool Company; Biggs Tool & Die; Bilar Tool & Die Corporation; Billet Tool; Birmingham Benders Company; Blackburn Instrument Company; Blackhawk Metal Products, Inc.; Blacklick Machine Company, Inc.; Blanchard Grinding Service, Inc.; Blanchard Metals Processing Company; Blanda, Incorporated; Blandford Machine & Tool Co., Inc.; Blitz Tool & Die; Blue Chip Mold; Bob's Tool & Cutter Grinding, Inc.; Bodine Tool & Machine Company; Bogden Company; Boice Industrial; Bollinger Tool & Die, Inc.; Boos Products; Bordo Mold & Machine, Inc.; Boring Machine Corp.; Boring, Inc.; Bosma Machine & Tool Corporation; Boss Tool & Mfg.; Boston Centerless, Inc.; Bowen & Company, Inc.; Bowers Machine Co.; Bowes Machine, Inc.; Boyd Machine Company; Boyle, Inc.; BoMar Machine; Bra-Vor Tool & Die Company, Inc.; Bradenton Tool & Machine; Bradhart Products, Inc.; Bradley Service Company; Breeze's Precision Boring Company; Brettrager Manufacturing Company; Bridean Machine & Tool Co., Inc.; Brighton N C Machine Corporation; Brimfield Precision, Inc.; Brinkman Tool & Die, Inc.; Bristol Instrument Gears, Inc.; Broadway Mold & Tool, Inc.; Brodbeck Tool & Machine Company; Brogdon Tool & Die, Inc.; Bronner Manufacturing & Tool Co.; Brookfield Industries, Inc.; Brooklyn Scraping & Re-Machining, Inc.; Brown Industries, Inc.; Brown Manufacturing Company, Inc.; Brown Production, Inc.; Brown-Covey, Inc.; Bruce Machine & Tool Co., Inc.; Buchanan Products, Inc.; Buckeye Die & Engineering; Budney Company, Inc.; Budney Industries; Buehrle Engineering Company; Buena Park Tool & Engineering; Buerk Tool & Machine Corporation; Buiter Tool & Die, Inc.; Bulgrin Mold & Machine; Burch Machine, Inc.; Burckhardt America, Inc.; Burco Precision Products; Burger Engineering, Inc.; Burgess Brothers, Inc.; Burke Industries; Burke Manufacturing, Inc.; Burrowes Research Machining, Inc.; Burton Industries; Busler's Machine Company; Busy-Bee Tooling; Bylsma Tool, Inc.; C & C Machining Company; C & C Manufacturing Company; C & C Manufacturing Corporation; C & D Engineering Company; C & G Machine & Tool; C & J Industries; C & M Machine Products, Inc.; C & R Manufacturing, Inc.; C & S Machine Products; C and L Custom Tooling; C A C Tool Corporation; C A D Enterprises; C A R Enterprises, Inc.; C A Spalding Company; C B Enterprises; C B Gear & Machine, Inc.; C B Kaupp & Sons, Inc.; C B S Boring & Machine Co., Inc.; C B S Manufacturing Company, Inc.; C D M Tool & Manufacturing Co. Inc.; C H W Precision Machining, Inc.; C J Grinding, Inc.; C J R Manufacturing Company, Inc.; C J Winter Machine Works; C L Precision Machine & Tool Co.; C M Grinding, Inc.; C M Smillie & Company; C N C Engineering; C N C Precision; C N C Precision Machining, Inc.; C P M Division (Division of Columbus Standard, Inc.); C R B Manufacturing, Inc.; C R E Enterprises; C T D Machines, Inc.; C T M, Inc.; C V Tool Company, Inc.; C. A. P. Tool & Mfg. Co., Inc.; C. C. Tool & Engineering; C. G. Tech, Inc.; C. M. I. Product Development; C. M. R. Engineering; Cain Machine Company; Cal-Disc Grinding Company; Cal-Matic, Inc.; Calcortec, Inc.; California Fineblanking Corporation; California Gundrilling, Inc.; California Reamer Company; Calx, Inc.; Cam Basic; Cambridge Special; Cambridge Tool & Die Corp.; Cambridge Tool & Manufacturing Co.; Camco Manufacturing, Inc.; Campbell Grinding & Machine, Inc.; Campbell Machinery, Inc.; Camtec, Inc.; Canan Mold, Inc.; Canto Tool Corporation; Capital Tool Company; Capitol Engineering Company; Capitol Technologies; Capitol Tool & Die Company; Capitol Tool & Die, Inc.; Car-Gor Tool & Die; Caran Precision Engineering & Manufacturing; Carbide Products Company; Cardinal Machine Company; Cardinal Machine Company, Inc.; Carius Tool Company, Inc.; Carl Machine Company, Inc.; Carl Rogers; Carl's Machine, Inc.; Carlin Machine Company, Inc.; Carlson Capital Manufacturing Co.; Carlson Tool & Manufacturing Corp.; Carlson-Rockford, Inc.; Carr Cylinder Company; Carr Lane Manufacturing Company; Carr Machine Company; Carr Tool & Machine Company, Inc.; Cascade Mold &.Die, Inc.; Cass Screw Machine Products Company; Catalina Tool & Mold, Inc.; Caval Tool & Machine Company; Cedar CNC Machining, Inc.; Centaur Tool & Die, Inc.; Centennial Tool Manufacturing; Centennial Tool, Inc.; Center Line Machine Company; Center Line Tool; Centerline Precision Machining; Centerline Tool & Die Company; CenterLine Industries, Inc.; Centex Machining, Inc.; Central Machining Specialties, Inc.; Central States Machine Service; Central Tool Company, Inc.; Central Tool Works, Inc.; Centurion Manufacturing; Century Machine Company, Inc.; Century Mold Company, Inc.; Century Tool & Gage Company; Century Tool & Manufacturing Co.; Century Tool and Design, Inc.; Certified Aerospace; Certified Grinding & Machine, Inc.; Certified Industries, Inc.; Champion Tool & Die Company; Chapman Engineering, Inc.; Charian Machine & Manufacturing; Charles Meisner, Inc.; Charlotte Cutting Tool; Charlotte Machine Company; Charlton Engineering Corporation; Chase Machine Company, Inc.; Check-Mate Industries; Checker Machine, Inc.; Chelar Tool & Die, Inc.; Chesco Products; Chicago Mold Engineering, Inc.; Chippewa Tool & Manufacturing Co.; Chris Papas Precision Company; Christon Grinding Company; Christopher Tool & Manufacturing; Circle-K-Industries; City Machine Tool & Die Co., Inc.; Clarich Mold Corporation; Clark Manufacturing Company; Clark Metal Products Company; Clark-Henry Company, Inc.; Classic Die, Inc.; Classic Mold Design; Cleveland Metal Products; Cleveland Mold & Die, Inc.; Cleveland Punch & Die Company; Cliffdale

Manufacturing Company; Clifford H. Jones, Inc.; Clifford Manufacturing Company; Clifton Automatic Screw; Cling's Machine And Stamping; Cloud Company; Co-Op Machine & Tool; Coast Cutters Company; Cobak Tool & Manufacturing Company; Coffey Associates; Coleman Corporation; Collins Instrument Company; Collins Machine & Tool; Colmar Corporation; Colonial Machine Company; Colorado Surface Grinding; Columbia Research & Development (Division of Ludlow Industries, Inc.); Columbia Screw Co., Inc.; Com-Tal Southwest, Inc.; Com-Tal, Inc.; Combined Metals Company; Comet Tool, Inc.; Command Corporation International; Commerce Grinding, Inc.; Commercial Kellering, Inc.; Commercial Machine, Inc.; Commercial Manufacturing Corp.; Commercial Tool & Die Company; Commonwealth Machine Co., Inc.; Commonwealth Technology; Compacting Tooling, Inc.; Companion Industries, Inc.; Competition Tooling, Inc.; Complex Tooling, Inc.; Component Engineers, Inc.; Composidie, Inc.; Composite Machine & Tool; Composite Mold Corporation; Compu Die, Inc.; Computer Wire EDM Corporation; Computerized Machining Services, Inc.; Concept Tool & Die Company; Conco Systems, Inc.; Condor Tool & Die; Coney Tool and Cutter Grinding; Conn Dee Industrial; Connecticut Jig Grinding, Inc.; Connecticut Tool & Manufacturing; Connell Tool Company; Connolly Tool & Machine Company; Conover Machine & Design, Inc.; Consolidated Mold & Manufacturing, Inc.; Conti Tool & Die Company; Continental Microwave and Tool Co., Inc.; Continental Mold & Tool, Inc.; Continental Precision, Inc.; Continental Tool & Machine; Continental Tool & Manufacturing, Inc.; Contour Mold, Inc.; Contract Products; Controlled Turning, Inc.; Converse, Inc.; Convex Mold, Inc.; Cook Manufacturing; Cook Tool & Die, Co.; Cooney Tool, Inc.; Copa Tool, Inc.; Cordell Machine Corporation; Coronado Machine, Inc.; Correa Machine & Tool Company, Inc.; Correll Manufacturing; Corrigan Manufacturing Co., Inc.; Country Machine & Tool, Inc.; Cox Machine Company, Inc.; Cox Tool Company, Inc.; Coy Machine Company; Craft Tool & Die Company, Inc.; Craftech E D M Company; Crafts Company, Inc.; Craftsman Tool & Mold Company; Cramers Precision Grinding, Inc.; Cranston Centerless Grinding; Crawford Tool & Die; Creative Machine Products; Creative Tool Company; Crest Manufacturing Company; Criterion Tool & Die; Cross Road Machine Shop; Crossland Machinery; Crown Mold & Machine, Inc.; Crown Tool & Die Company; Crownel Corporation; Crush Master Grinding Corporation; Crystal Die Mold, Inc.; Cumberland Tool & Die, Inc.; Curio Precision Tool & Machine; Cust-M-Thread Grinding; Custom Engineering, Inc.; Custom Etch Inc.; Custom Jig Grinding, Inc.; Custom Machine, Inc.; Custom Machine, Inc.; Custom Machining, Inc.; Custom Metal Products Corporation; Custom Mold & Design; Custom Tool & Design, Inc.; Custom Tool & Die, Inc.; Custom Tool & Manufacturing Company; Cyma Tool Corporation; Cypress Tool & Die Company, Inc.; D & B Industries, Inc.; D & H Manufacturing Company; D & J Precision Machining, Inc.; D & L Tool, Inc.; D & M Products; D & S Manufacturing Corporation; D A K Tool Company, Inc.; D C Design, Inc.; D C Machine Shop; D F M Corporation; D M C International, Inc.; D M Machine Company, Inc.; D S Greene Company, Inc.; D S Machine; D S Manufacturing, Inc.; D. M. M. Manufacturing; D-K Manufacturing Corporation; D-S Machine Tool & Development; D-Velco; D/A Machine Products; Dadeks Machine Works Corporation; Daily Industrial Tools; Daley Design & Mfg., Inc.; Damen Tool & Engineering Co., Inc.; Danco Precision, Inc.; Danly Die Set; Danly Die Set Division (Division of Avondale Industries); Dap Tool & Mold Inc.; Dar Machine & Manufacturing, Inc.; Darotek, Inc.; Darr Industries, Inc.; Dass Machine, Inc.; Dauntless Molds, Inc.; David Barnes Company; David Engineering & Manufacturing; Dayton Drill Bushing Company; Dayton Progress Corporation; Dayton Reliable Tool; Dayton Tool Company, Inc.; Dayton Wireburn, Inc.; De Hoff Tool & Die Co., Inc.; De Long Manufacturing; Deck Brothers, Inc.; Deck Machine & Tool; Deep South Automotive, Inc.; Deephole Machine Company; Deeter's Tool & Manufacturing, Inc.; Degele Manufacturing, Inc.; Dekalb Tool & Die, Inc.; Del Packaging Inc.; Delaware Machinery & Tool Co., Inc.; Dellacor Company, Inc.; Delltronics, Inc.; Delp Corporation; Delta Machine & Tool; Delta Machining, Inc.; Delta Precision Tool & Instruments; Delta Systems, Inc.; Delta Tool & Die Company; Delta X Corporation; Deltec, Inc.; Delto Tool Company; Demaich Industries, Inc.; Demark Industries, Inc.; Demmer Corporation; Demps Saw & Tool Company, Inc.; Denby Mold Company; Dependable Tool & Die; Dependable Tool & Manufacturing Co.; Desert Precision Mfg., Inc.; Design Tool & Machine Company; Designs For Tomorrow, Inc.; Deterling Company, Inc.; Detroit Tool Engineering Company; Detwiler Tool Company; Development Research & Tool;

Dexter Tool Company; Diamond Lake Tool; Diamond Machine Works, Inc.; Diamond Mold & Die, Inc.; Diamond Tool & Die Co., Inc.; Diamond Tool Products; Dickey & Son Machine & Tool; Die Cast Die & Mold, Inc.; Die Cast Dies, Inc.; Die Matic Corporation; Die Products, Inc.; Die Supply Corp.; Die Supply Corporation; Die-Matic, Inc.; Die-Mension Corporation; Die-Tech Manufacturing, Inc.; Die-Tron-Die-Cam, Inc.; Diecraft Corporation; Dieline Corporation; Diemakers, Inc.; Diemaster Tool & Mold; Diematics, Inc.; Dietooling (Division of Diemolding); Dietronic Stampings, Inc.; Dillon Industries, Inc.; Dimac Manufacturing Co., Inc.; Discovery Tool & Manufacturing; Ditool (Division Of Foundry Allied Industries); Diversified Engraving Stamp; Diversified Tool & Die; Diversified Tool Corporation; Diversified Tools, Inc.; Dixie Numerics, Inc.; Dixie Tool & Die, Inc.; Dixon Components, Inc.; Dollins Tool, Inc.; Donkra Manufacturing Company; Donlee Precision; Dot Machine & Tool Company; Double D Machine & Tool Company; Double Disc Grinding of Hauppauge, Inc.; Dowty's Machine Works, Inc.; Doyle Manufacturing, Inc.; Drake Engineering Co., Inc.; Drem Machine Company; Drilex Corporation; Du-Well Grinding Company, Inc.; Dugan Tool & Die Company; Duke Grinding, Inc.; Dulond Tool & Engineering, Inc.; Dun-Rite Industries, Inc.; Dura Metal Products Corporation; Durable Metal Products Company; Durivage Pattern Company; Duwest Tool & Die, Inc.; Dyko Tool Corporation; Dynacorp, Inc.; Dynamic Engineering, Inc.; Dynamic Enterprises, Inc.; Dynamic Machine & Fabricating; Dynamic Machine Works; Dynamic Metal Products; Dynamic Tool & Design, Inc.; Dynamic Tool & Die Company; Dynamic Tool and Die, Inc.; Dynasty Mold & Engineering, Inc.; Dysinger Tool & Die Company; E & C Manufacturing Company, Inc.; E & F Tool Company, Inc.; E A M, Inc.; E C M Of Florida; E C M Specialties, Inc.; E D I High-Tech Tooling & Machining; E D M Services, Inc.; E D M Wire-Cut Northwest, Inc.; E F Precision; E F S Fabrication, Inc.; E J Codd Company, Baltimore City; E K Machine Tool, Inc.; E M I Precision; E R C Concepts Company; E R I Division (Division of Babcock & Wilcox Company); E S L Corporation; E W Johnson Company, Inc.; E. D. M. Exotics; E-B Manufacturing Company, Inc.; E-Z Machine Corporation; Eagle Metalcraft, Inc.; Eagle Tool & Machine Company, Inc.; Eason & Waller Grinding Company; Eastern Tool & Die, Inc.; Eastern Tool &

Engineering Corp.; Eastford Tool & Die Co.; Ebway Corporation; Echo Precision Tooling Company; Eck & Eck Machine Company, Inc.; Eckel Manufacturing Company; Eckert Manufacturing Co., Inc.; Ecko Tool & Die, Inc.; Eclipse Mold, Inc.; Ed Fish Machine Company; Edco Tool & Die Company; Edel-Brown Tool & Die Company; Edgefield Fine Machining Company; Edgerton Machine & Gear, Inc.; Edinger Manufacturing, Inc.; Edmar Engineering Company; Edmunds Manufacturing Company; Edro Engineering, Inc.; Egli Machine Company, Inc.; Ehrhardt Tool & Machine Company; Eicom Corporation; Eighty-Six Tool Company; Eisen Gustav Tool & Die Works; Elbro Tool Company, Inc.; Elcam Tool & Die, Inc.; Elco Gear Corporation; Electra Form, Inc.; Electric Terminal Corporation; Electrical Discharge Machine; Electro Form Corporation; Electro Machine & Tool, Inc.; Electro Mold Company; Electro-Mechanical Products, Inc.; Electro-Methods, Inc.; Electrodie, Inc.; Electrol Manufacturing Company; Electronics Tool & Die; Electrotools, Inc.; Elger Tool and Machine Co., Inc.; Elgin Machine Corporation; Elite Tool Company, Inc.; Elizabeth Carbide Die Co., Inc.; Eljay Corporation; Elk Lake Tool Company; Elkhart Machine & Tool; Elliot Tool & Manufacturing Company; Elliott's Precision, Inc.; Ely Tool, Incorporated; Emblem Tool & Engineering Company; Emco Engineering; Emmert Welding & Manufacturing Inc.; Emory Machine & Tool Company; Empire Corporation; Empire Machine Shop, Inc.; Empire Manufacturing Corporation; Enbi Corporation; Engineered Metal Products Company; Enpro Systems, Inc.; Enterprise Tool & Die; Enterprise Tool & Die, Inc.; Ephrata Precision Parts, Inc.; Epic Manufacturing Company, Inc.; Erca Tool Die & Stamping Company; Erdle Manufacturing Company, Inc.; Erickson Tool & Machine Company; Ermco; Ernest Gaum, Inc.; Ervite Corporation; Esco, Inc.; Estee Mold & Die, Inc.; Esterle Mold & Machine Co.; Estul Tool & Manufacturing Co. Inc.; Etko Machine, Inc.; Euclid Diemakers, Inc.; Euclid Precision Grinding Co., Inc.; Evana Tool & Engineering, Inc.; Evans Tool & Die, Inc.; Evansville Tool & Die; Ever Fab, Inc.; Ever-Ready Tool, Inc.; Everett Pattern and Mfg., Inc.; Ewart-Ohlson Machine Company; Exact Cutting Service, Inc.; Exact Tool & Die, Inc.; Excel Foundry and Machine, Inc.; Excel Machine Company; Excel Machine Products, Inc.; Excel Manufacturing, Inc.; Excel Stamping & Manufacturing, Inc; Excel Tech Machine Repair & Scraping, Inc.; Excel Tool & Mfg.; Executive Mold Corporation; Expertise Components, Inc.; Expo Tool Company, Inc.; Extrusion Services, Inc.; Ezell Precision Tool Company; F & G Multi-slide, Inc.; F & G Tool & Die Company; F & M Machine Corporation; F & S Tool & Gauge Company; F C Machine Tool Design, Inc.; F D Contours; F D T Precision Machine Co., Inc.; F H Peterson Machine Corporation; F K Instrument Company, Inc.; F M Machine Company; F M S Industries, Inc.; F P Pla Tool & Manufacturing Co.; Fabian Machine & Tool; Fabmaster Industries, Inc.; Fabritek Company, Inc.; Fabro Engineering, Inc.; Fair Tool & Die Company; Fairbanks Machine & Tool; Fairfield Tool Company, Inc.; Fairview Machine Company, Inc.; Fairway Molds, Inc.; Faith Tool & Manufacturing, Inc.; Falcon Precision Machine Co.; Falicon Performance Eng.; Falls City Machine Technoloby; Falls Mold & Die, Inc.; Fame Tool & Manufacturing Company; Fargo Machine Company, Inc.; Farris Machine & Tool Company; Faustson Tool; Fay Tool & Die Company; Felton Machine Co., Inc.; Femmer Machine Company; Ferange Industries, Inc.; Ferrex Corporation; Ferriot Inc.; Fibreform Electronics; Fidelity Tool & Machine Co., Inc.; Field Equipment & Service Company; Figgins Machine Company; Finest Tool Company; Finish Line Manufacturing; Finntech, Inc.; Fischer Tool & Die Corporation; Fitzwater Engineering Corporation; Five Star Tool Company, Inc.; Flagg Steel Company; Flametech Corporation; Fleck Machine Company; Florida Aero Precision, Inc.; Fluke Metal Products, Inc.; Fordees Engineering; Formac Corporation; Formative Products; Formtech; Formtech Enterprises, Inc.; Forrest Machine, Inc.; Forster Tool & Die; Forsyth Engineering & Machine Corp.; Fort Custer Tool & Die, Inc.; Foster Machine & Manufacturing Co.; Four Star Precision Products, Inc.; Four-D Tool Company; Fox Valley Tool & Die, Inc.; France Special Tool; Franchino Mold & Engineering; Frank J. Stolitzka & Son, Inc.; Fre-Mar Industries, Inc.; Frederick's Machine Shop; Fredon Corporation; Fredon Development Industries Inc.; Fremont Plastic Molds, Ltd.; Frenz & Kellogg Tool Corporation; Friemark, Inc.; Fulton Tool Company, Inc.; Furno Co.; Futaba Corporation of America; Future Fabricators; Future Tool & Die Company, Inc.; Future Tool & Die, Inc.; Fyco Tool & Die, Inc.; Fyne Instrument Corporation; G & G Machine Technology's Inc.; G & G Tool Company, Inc.; G & H Jig Grinding, Inc.; G & H Precision Machining; G & J Machine Shop, Inc.; G & K Machine & Tool Company; G & L Machine, Inc.; G & L Machining, Inc.; G & M Precision, Ltd.; G & R Enterprises; G & R Precision Grinding; G & W Industries, Inc.;

G & W Tool & Die Company, Inc.; G & Z N/C Machining Company; G B F Enterprises, Inc.; G B Tool Company; G L B Precision, Inc.; G M A Tooling; G M Tool & Design, Inc.; G M Tool Corporation; G N R Plastic Co., Inc.; G P Precision Metal West; G P Tool Company; G S Precision, Inc.; G T G, Inc.; Gadsden Tool, Inc.; Gage-Line Sciences, Inc.; Galaxy Tool & Mold, Inc.; Galaxy Tool Corporation; Gales Manufacturing Corporation; Galger Engineering & Manufacturing Company; Galgon Industries, Inc.; Gambar Products Company, Inc.; Gar Incorporated; Garcia Associates; Garray Machine; Gasperak Mold & Engraving; Gatco, Inc.; Gauer Mold & Machine Company; Gem City Engineering Company; Gem Industries; Gemel Precision Tool Company, Inc.; Gemini Tool & Precision Machine; General Die & Engineering Corp.; General Engineering Company; General Machine & Tool; General Machine Products; General Machine Shop, Inc.; General Machine Works; General Tool & Die Company, Inc.; General Tool Company; Genesee Manufacturing Company, Inc.; Genesee Metal Stampings; Genesee Tool & Engineering, Inc.; Genuine Tool Company, Inc.; Geometric Manufacturing; George Welsch & Son Company; German Tool & Die, Inc.; Germantown Tool & Machine; Geyer Precision Machining Company; Gibbs Machine Company, Inc.; Gilbert Engineering Company; Gilbert Machine & Tool Company Inc.; Gilbert Tool & Die, Inc.; Gilkey Machine; Gill Tooling; Gillaspie Engineering & Mfg.; Gillette Machine & Tool Company; Girard Tool & Die; Glaze Tool & Engineering Company; Glebar Company, Inc.; Glendale Machine Company, Inc.; Glidden Machine & Tool, Inc.; Goebel Machine Service, Inc.; Goffs Industrial Aid Machining Inc.; Goguen Industries; Goldenwest Manufacturing, Inc.; Goosen Enterprises; Gordon Industries; Gottschall Tool & Die; Gougler Industries; Grand Engineering; Grand Island Precision; Grand Rapids Diecraft, Inc.; Granger Machine & Tool, Inc.; Graphic Equipment Manufacturing Company, Inc.; Graybills Tool & Die, Inc.; Great American Tool & Mfg. Co.; Great Lakes Grinding, Inc.; Green Creek Tool & Gage, Inc.; Greenwell Machine & Tool, Inc.; Gregg Tool & Die Company, Inc.; Gremco Machine & Tool; Griffin Tool, Inc.; Grind All Precision Tool; Grind Company, Inc.; Grind-All, Inc.; Gros-Ite Industries; Groth Equipment Corporation; Guill Tool & Engineering Co., Inc.; Gulf South Machine; Gurr

Enterprises Ltd.; H & H Machine Company; H & H Machine Company, Inc.; H & H Machine Shop Of Akron, Inc.; H & H Machined Products, Inc.; H & H Tool & Die Company; H & J Tool & Die Company; H & K Tool & Machine Company; H & M Screw Machine Products, Inc.; H & P Tool & Machine, Inc.; H & R Tool Works, Inc.; H & S Swansons' Tool Company; H & W Tool Company, Inc.; H B Machine, Inc.; H Brauning Company, Inc.; H Galow Company; H H Arnold Company, Inc.; H H H Machine Company; H H Mercer, Inc.; H M Dunn Company, Inc.; H M M Engineering Design Services; H P A S Inc.; H P Smith Spindle Corporation; H R Edgar Machining & Fabricating; H S & S Machine Tool Rebuilders; H S Die & Engineering, Inc.; H T B, Inc.; Haberman Machine; Hackett Precision Company; Haemer Tool & Die; Hahn & Clay; Haley Tool & Stamping, Inc.; Hallum Tooling, Inc.; Halpro, Inc.; Hamden Tool & Die Co., Inc.; Hamill Manufacturing Company; Hamilton Mold & Machine, Inc.; Hamilton Tool Company; Hamlin Steel Products, Inc.; Hammill Manufacturing Company; Hammond and Barrie; Hammond Tool, Inc.; Hancock Manufacturing Corporation; Handy Tool & Manufacturing Company, Inc.; Hans Rudolph, Inc.; Hansa Plastics, Inc.; Hansford Manufacturing Corporation; Hanson Mold; Hanson Precision Machine; Har-Les Tool, Inc.; Hardy-Reed Tool; Harig Manufacturing Corporation; Harmon Machine Products; Harmony Industrial Corporation; Harrington Machine & Tool, Inc.; Hartford Aircraft Products, Inc.; Hartford Cutter Grinding, Inc.; Haserodt Machine & Tool, Inc.; Haskell Machine & Tool, Inc.; Haumiller Engineering Company; Hauser Machine Company, Inc.; Hawkins Machine Company, Inc.; Hawkinson Mold Engineering Company; Hayden Corporation; Hayden Precision Industries; Heacock Metal and Machine, Inc.; Heatherington Machine Corporation; Hebert Machine Works; Hedalloy Die Corporation; Heilmann Tool & Manufacturing Co.; Helac Corporation; Helio, Inc.; Hellebusch Tool & Die, Inc.; Helm & Son Ltd.; Helmel Engineering Products, Inc.; Henes Stamping, Inc.; Henman Engineering & Machine, Inc.; Heritage Custom Fabricators, Inc.; Herr Precision Machining; Herrick & Cowell Company; Herzog Tool & Die Company, Inc.; Hess Die Mold, Inc.; Hess Engineering, Inc.; Hetrick Manufacturing, Inc.; Heyl Engraving, Inc.; Hi-Ridge Manufacturing, Inc.; Hi-Tech Industries, Inc.; Hi-Tech Manufacturing, Inc.; Hi-Tech Metal Cutting, Inc.; Hi-Tech Mold & Engineering, Inc.; Hi-Tech Mold & Tool, Inc.; Hiatt Metal Products Company; High Precision Machining Services; High-Tech Industries; Hill Aerospace & Defense; Hill Engineering, Inc.; Hilton Industries; Hilton Tool & Die Corporation; Hinshaw Tool & Die, Inc.; Hir-Trec Machine & Tool, Inc.; Hittle Machine & Tool Company; Hobson & Motzer, Inc.; Hodge Tool Company, Inc.; Hoercher Industries, Inc.; Hoffstetter Tool & Die; Hofmann Tool & Die Corporation; Holden Machine Company, Inc.; Holland Engineering Company; Hollis Industries, Inc.; Holmes Manufacturing Corporation; Holyoke Machine Company; Hondo Die Supply, Inc.; Hone Lap Company, Inc.; Hopco; Hopkins Machine & Tool Company; Hoppe Tool Works, Inc.; Hopwood Tool & Die; Horton Machine Company; Houston Company; Houston Cutting Tools, Inc.; Houston Metal Cutting Company; Hovis Precision Products; Howell Bros. Machine & Tool; Howell Precision, Inc.; Howland Industries; Howland Machine Corporation; Hubbell Machine Company, Inc.; Hudgins Precision Manufacturing, Inc.; Hudson Machine Works, Inc.; Hugh Mathews Machine Works, Inc.; Hughes Fabrication; Hughes Manufacturing, Inc.; Humbolt Instrument Company; Hunt & Hunt, Inc.; Hunt Machine & Manufacturing Co.; Huron Machine Products, Inc.; Huron Tool & Cutter Grinding; Huron Tool & Engineering Company; Husky Cutter Grinding, Inc.; Hutchins Tool & Engineering Co.; Hydraulic House, Inc.; Hydrodyne Division Of FPI, Inc.; Hygrade Machine & Tool, Inc.; Hygrade Tool & Manufacturing Co.; Hyland Machine Company; Hytrol Manufacturing, Inc.; Hytron Manufacturing Company, Inc.; I E M, Ltd.; I T C Automation, Inc.; I T M, Inc.; I-Corp, Inc.; Ideal Engineering Corporation; Ideal Engineering, Inc.; Ideal Tool Company; Ilion Machine Products, Inc.; Imco, Inc.; Imperial Carbide, Inc.; Imperial Die & Manufacturing Co.; Imperial Machine & Tool Company; Imperial Machine & Tool, Inc.; Imperial Tool & Die; Imperial Tool & Manufacturing Co., Inc.; Impression Die & Tool; Independent Die & Manufacturing; Independent Tool & Manufacturing; Indian Springs Manufacturing Co., Inc.; Indiana Tool & Die; Industrial Bearings & Supply, Inc.; Industrial Chrome Specialties, Inc.; Industrial Custom Automatic Machine; Industrial Engineering, Inc.; Industrial Engravers, Inc.; Industrial Equipment Repair Co.; Industrial Form Grinding; Industrial Grinding, Inc.; Industrial Machine Company; Industrial Molds, Inc.; Industrial Park Rebuild; Industrial Precision Products, Inc.; Industrial Recision Services; Industrial Tectonics, Inc.; Industrial Tool & Die Co., Inc.; Industrial Tool & Machine Company; Industrial Tool, Die & Engineering, Inc.; Industrial Tool, Inc.; Industrial Tooling, Inc.; IndTool, Inc.; Injection Mold & Machine Company;

Innex Tool & Die, Inc.; Innovation Machining Corporation; Innovative Concept Engineering & Manufacturing, Inc.; Innovative Systems Machine & Tool, Inc.; Innovative Tool; Instrumental Machine Products, Inc.; Integrated Machine Systems, Inc.; Inter-City Manufacturing, Inc.; Intracoastal Plastics, Inc.; Investment Mold Sales & Design; Irotas Manufacturing Company; Isimac Machine Company, Inc.; Istrouma Foundry & Machine Works; J & A Tool Company; J & B Tool; J & D Tool & Die, Inc.; J & F Machine Company; J & F Machine Company; J & H Deburring Company; J & J Machining; J & L EDM; J & M Grinding, Inc.; J & M Machine Products, Inc.; J & M Machine, Inc.; J & N Engineering, Inc.; J & R Boring & Machine; J & R Machine Company; J & W Grinding, Inc.; J & W Jolly, Inc.; J B Tool Die & Engineering, Inc.; J B Tool, Inc.; J B's Precision Industries, Inc.; J C B Precision Tool & Mold, Inc.; J C Barton Company; J C Parry & Sons Co, Inc.; J C Wilson Engineering Corporation; J D Kauffman Machine Shop; J D Tool & Engineering, Inc.; J F Fredericks Tool Company, Inc.; J G R Manufacturing Corporation; J G Tool & Die Co., Inc.; J Hacker, Inc.; J I Machine Company, Inc.; J K Tool & Die Design, Inc.; J L Behmer Corporation; J M B Machine & Tool Company, Inc.; J M Mold, Inc.; J M S Mold & Engineering Co., Inc.; J Myles Machine Company; J O K A Industries; J Ross Miller & Sons, Inc.; J Ryall Machine Works; J S Die & Mold, Inc.; J S S Tool & Die; J T Engineering, Inc.; J T Machine Company; J T Tool Company; J W Harwood Company; J W Tool & Die Company, Inc.; J. D. Morris Machine & Mfg., Inc.; J. E. S. Grinding, Inc.; J. P. Tool, Inc.; J.P. Tool Inc.; Jack Haines Company; Jack Stewart Kellering; Jackson & Heit Machine Company; Jackson Machine; Jaco Tool & Die, Inc.; Jaman Tool, Die & Machine Company; Jamar Tool, Inc.; James P. Chick Company; James Singh Precision Eng., Inc.; Jamestown Design & Machine; Jandi Machine & Tool; Janson Tool & Die Company; Jasco Tools, Inc.; Jaycraft Corporation; Jell Tool Company; Jemco, Inc.; Jenkins Machine, Inc.; Jenkins Precision Grinding Co.; Jennison Corporation; Jergens, Inc.; Jerpbak Bayless Company; Jerry Carroll Machining, Inc.; Jerry Tools, Inc.; Jet Die & Development Company; Jet Industries, Inc.; Jet Machine Works, Inc.; Jig

Grinding Service Company; Jigmasters Tool & Gauge; Jim Cook Company; Jimco, Inc.; Jirgens Modern Tool Corporation; Joburn Tool, Inc.; Joeal Tool Company, Inc.; John V Potero Company, Inc.; Johnson Controls, Inc.; Johnson Engineering Company; Johnson Precision Machine, Inc..; Johnson Precision Machining, Inc.; Johnson Precision Works, Inc.; Johnson Technology; Johnson Tool Company; Johnson's Machine & Tool, Inc.; Jomar Machining, Inc.; Jonaco Machine, Inc.; Jonco Tool Company; Jordan & Smith, Inc.; Jordan Machine Co, Inc.; Joss Tool & Manufacturing Co., Inc.; Joyce Engraving Company; Judd Industries, Inc.; Juell Machine Company, Inc.; Juklin Industries, Inc.; Jurman Metrics, Inc.; K & A Engineering Company; K & B Tool; K & E Instrument; K & E Mfg. Company; K & G Tool, Inc.; K & H Mold & Machine Division; K & K Grinding Company, Inc.; K & M Precision Machining, Inc.; K & R Machine Company, Inc.; K & S Tool & Die, Inc.; K & S Tool & Manufacturing Company, Inc.; K-N Mold, Inc.; K and M Machine Fabricating, Inc.; K A F—Tech Industries; K D Service Company, Inc.; K L C Enterprises, Inc.; K L Winter, Inc.; K Mold & Engineering, Inc.; K V, Inc.; K Y Industries, Inc.; K. Y. Rogers, Inc.; K-B-K Tool & Manufacturing, Inc.; Ka-Wood Gear & Machine Company; Kaan Engineering, Inc.; Kahre Brothers, Inc.; Kal Tool & Die Company, Inc.; Kamashian Engineering; Kamco Plastics, Inc.; Kapp Machine Company; Karg Corporation; Karman Tool & Plastic Manufacturing; Karsten Engineering; Kasco Metal Products Corporation; Kaufhold Machine Shop, Inc.; Kay's Precision Manufacturing Corp.; Kays Engineering; Kebco Mold & Design, Inc.; Keck-Schmidt Tool & Die; Keegan's Machine & Fabricating, Inc.; Keen Machine Company; Kelbros, Inc.; Kellems & Coe Tool Corporation; Keller Technology Corporation; Kelly Carbide Die Corporation; Kelm Manufacturing Company; Kelmar, Inc.; Ken Raz Tool Company, Inc.; Kendrick Tool & Engineering; Kenlee Precision Corporation; Kennedy & Bowden Machine Company; Kennedy Tool & Die Company; Kennick Mold & Die, Inc.; Kent Mold Engineering; Kentucky Machine & Tool Company; Kenwood Machine; Kenyon Specialties Co.; Kern Special Tools Company, Inc; Kerns Manufacturing Corporation; Kerstan Precision Company, Inc.; Key Products; Keyes Machine Works, Inc.; Keystone Machine, Inc.; Keystone Machine, Inc.; Keyway, Inc.; Kilgore Machine Company, Inc.; Kimberly Gear & Spline, Inc.; Kindex, Inc.; Kinetic Tool Company; King Machine, Inc.; Kirsop Industries; Klix Tool Corporation; Knight Machine & Tool; Knight Tool Company; Knowlton Manufacturing Company; Koch's Machine & Tool Company; Kolar Machine, Inc.; Komo Machine, Inc.; Koning Machine & Tool Company; Konrad Corporation; Koral Tool & Die Industries, Inc.; Kordenbrock Tool & Die Company; Kovacs Machine & Tool Company, Inc.; Kreichbaum Machine & Tool; Kremin, Inc.; Krimminger Machine Company; Krisalis Machining; Krizman, Inc.; Kroesen Tool Co., Inc.; Kruse Tool & Die, Inc.; Kuester Tool & Die Co., Inc.; Kurz & Son, Inc.; KENLAB; L & H Tool & Die, Inc.; L & J Tool & N C Machine; L & L Machine, Inc.; L & L Tool & Die; L & M Mold Corporation; L & M Precision Grinding Corp.; L & P Machine, Inc.; L & S Corporation; L A B Quality Machining; L B Machine & Manufacturing Company; L H Carbide Tool & Die Corp.; L J Mroz Design Service; L P I Corporation; L T L Company, Inc.; L. A. Simpson Machine Company; L-B-L Corporation; L-K Tool & Manufacturing, Inc.; Lab Threads & Gear Works, Inc.; Labco Welding, Inc.; Ladapa Die & Tool, Inc.; Lagonda Tool Company; Lakeland Mold, Inc.; Lakeland Tool & Engineering, Inc.; Lakeview Tooling, Inc.; Lakewood Engineering, Inc.; Lamar Industrial Plastics II; Lamb Machine & Tool Company; Lamb Technicon Corporation; Lamina, Inc.; Lampin Corporation; Lamson Products Company; Lancaster Knives, Inc.; Lancaster Machine Shop; Lancaster Metal Products Company; Lancaster Mold, Inc.; Lancaster Tool & Machine, Inc.; Land Specialties Manufacturing Co.; Landry Specialty Welding, Inc.; Lane Punch Corporation; Lane Punch Corporation; Laneko Engineering Company; Laneko Precision Corporation; Laneko Roll Form, Inc.; Lange Precision Company; Lanlyn Instrument Company; Lanum Metal Products Company, Inc.; Lark Manufacturing Company, Inc.; Laser Fare, Ltd.; Laser Tool Company; Laserform; Lathe Tool Works, Inc.; Layke Tool & Manufacturing, Inc.; LaGrange Machine, Inc.; Lebal Industries, Inc.; Lebanon Tool Co.; Leblanc Grinding Company; Leblond Makino Machine Tool Company; Ledford Engineering Company, Inc.; Leech Tool & Die Works, Inc.; Leech, Incorporated; Leemax Mfg. Corp.; Lees Enterprise; Leese & Company, Inc.; Leicester Die & Tool, Inc.; Leidel Corporation; Lempco Industries, Inc.; Lenit Machine Company; Lentros Engineering, Inc.; Leonardi Manufacturing Co., Inc.; Letsch Manufacturing, Inc.; Levic Plastics, Inc.; Levion Company, Inc.; Lewis Machine & Fabricating Company; Liberty Tool & Die Corporation; Libra Manufacturing Company; Ligi Tool & Engineering, Inc.; Limmco, Inc.; Linco Tool & Machine Company; Linco, Inc.; Link, Inc.; Linke Tool Die & Engineering Co., Inc.; Lloyd B. Cogswell Manufacturing Co.; Lloyd Company; Lloyd Tool & Manufacturing Corp.; Loadometer Corporation; Lobart Company; Logan Machinists, Inc.;

Lombardo Tool & Machine Company; Lombness Tool & Die Company, Inc.; Long-Stanton Manufacturing Company; Lonner Industries, Inc.; Look Precision, Inc.; Lorenzen's Tool & Dies, Inc.; Louis J. Hansen Enterprises, Inc.; Louis Vigh Tool & Die; Louisiana Engine Rebuilding Co.; Louisville Machine Mfg. Corporation; Loyal Machine Company, Inc.; Lucas Machine Co.; Lucas Machine Division; Luick Quality Gage & Tool; Lunar Industries, Inc.; Lunar Tool & Machinery Company; Lunar Tool & Mold, Inc.; Lunquist Tool & Manufacturing Corp.; Lynn Welding; Lynx, Inc.; Lyons Tool & Die Company; M & D Loe Manufacturing, Inc.; M & H Engineering Company, Inc.; M & H Precision; M & H Tool & Die, Inc.; M & J Grinding & Tool, Inc.; M & M Machine Company, Inc.; M & S Machine & Manufacturing Co.; M & S Welding Company, Inc.; M C General, Inc.; M D E, Inc.; M D F Tool Corporation; M D Machine Co., Inc.; M E P P Tool Company, Inc.; M G M Tool & Die, Inc.; M G W Precision Small Parts; M S Willett, Inc.; M T E, Inc.; M W Industries, Inc.; M-C Fabrication, Inc.; M-Tron Manufacturing Company, Inc.; Mac Law Tool & Aircraft; Mac Machine Company, Inc.; Machine Products Corporation; Machine Service Consultants; Machine Specialties Company; Machine Tool Specialists, Inc.; Machine Tooling, Inc.; Machinecraft, Inc.; Machinery Spare Parts & Supplies; Mackenzie Machine & Marine Works; Macnab Manufacturing, Inc.; Macor, Inc.; Maddox Metal Works, Inc.; Maddox Tool & Die Shop; Madgett Enterprises; Madison-Smith Machine and Tool Co.; Maeward, Inc.; Magdic Precision Tooling, Inc.; Maghielse Tool & Die Company; Magna Engineering; Magna Machine & Tool Company; Magna Standard Manufacturing, Inc.; Maho Machine Tool Corporation; Main Mold, Inc.; Maine Machine Products; Majer Precision Grinding, Inc.; Majestic Mold & Tool, Inc.; Majestic Tech; Majestic Tool & Engineering Co., Inc.; Major Tool & Die Division (Division of Means Stamping Industries, Inc.); Major Tool & Machine, Inc.; Mal Ber Manufacturing Company; Mallay Corporation; Mamco Manufacturing Company; Manchester Tool & Die; Manco, Inc.; Manda Machine Company,

Inc.; Manetek, Inc.; Maney Aircraft; Manheim Special Machine Shop; Manufacturers Tool & Die; Manufacturing Appraisal Company; Manufacturing Machine Corporation; Manufacturing Service Company; Mar-Mac Precision Corporation; Mar-Tech Industries, Inc.; Marco Manufacturing Company; Marcy Machine, Inc.; Mardon Enterprises, Inc.; Mardon Industries, Inc.; Mardon Tool & Die Company, Inc.; Maric Precision; Marini Tool & Die Company, Inc.; Mark Concepts, Inc.; Marlton Pike Precision; Marquardt Engineering, Inc.; Marquette Tool & Die Company; Mars Manufacturing Company, Inc.; Martco, Inc.; Martin Machine Company, Inc.; Martin Machine, Inc.; Martinelli Machine; Marton Tool & Die Company, Inc.; Masco Machine, Inc.; Massey Grinding Service, Inc.; Master Cutting & Engineering; Master Manufacturing Co.; Master Metal Engineering, Inc.; Master Precision Machining, Inc.; Master Precision Tool Corporation; Master Tool & Die, Inc.; Master Tool & Mold, Inc.; Mastercraft Mold, Inc.; Matrix Machine, Inc.; Matrix Tool, Inc.; Matthews Gauge, Inc.; Maudlin & Son Manufacturing Company, Inc.; Maurer Metalcraft, Inc.; Maxwell Bailer Corporation; May Industries, Inc.; May Tool & Die, Inc.; May Tool & Mold Company, Inc.; Maya Jig Grinding & Gage Company; Mayday Manufacturing Company; Mayfair Molded Products; Mayfield Machine Shop, Inc.; McAfee Tool & Die, Inc.; McBee Engineering, Inc.; McCormick/Bates Manufacturing; McGill Manufacturing Company; McKenna Industries, Inc.; McLinden Machine, Inc.; McNeal Enterprises, Inc.; McNeill Manufacturing Company; McPherson Implement, Inc.; McSwain Manufacturing Company; Meadville Plating Company, Inc.; Meadville Tool Grinding; Mechanical Associates, Inc.; Mechanical Products Manufacturing; Mechanized Enterprises, Inc.; Medved Tool & Die Company; Mefco, Inc.; Megacity Tool & Manufacturing Corp.; Meko Industries,.Inc.; Melvin Tool & Die, Inc.; Menegay Machine & Tool Company; Mercer Machine & Tool Co., Inc.; Mercer Machine Company, Inc.; Mercury Tool & Manufacturing Co.; Mercury Tool & Mfg., Inc.; Meriden Manufacturing; Meridian Products Corporation; Merit Machinery, Inc.; Merkler Machine Works; Merlone Metal Spinning, Inc.; Meta-Meg Tool Corporation; Metal Forming & Coining; Metal Hans, Inc.; Metal Processors Inc.; Metal Products Mfg., Inc.; Metal-Tech, Inc.; Metallon, Inc.; Metco Manufacturing Company, Inc.; Metform Tool Corporation; Methods & Machining Services Co.; Metri-Tech Engineering, Inc.; Metric, Inc.; Metrix Manufacturing Company; Metro Manufacturing, Inc.; Metro Metal Products, Inc.; Metro Mold & Design, Inc.; Meyer Tool & Machine Company; Miami Valley Punch, Inc.; Michiana Plastics, Inc.; Micka Manufacturing Company; Micro Chrome & Lapping, Inc.; Micro Cut; Micro Diameters Company; Micro Diameters, Inc.; Micro Instrument Corporation; Micro Machine Shop; Micro Machining, Inc.; Micro Manufacturing Corp.; Micro Precision Company; Micro Punch & Die Company; Micro Stamping Corporation; Micro Surface Engineering, Inc.; Micro Tool & Manufacturing Company; Micro Tool Engineering, Inc.; Micro-Tech Production Machine Co.; Micro/Belmont Engineering; Micromet, Inc.; Micron Tool & Manufacturing, Inc.; Microtome Precision, Inc.; Mid West Mold; Mid-Central Manufacturing, Inc.; Mid-South Industries, Inc.; Mid-State Manufacturing, Inc.; Midland Precision Machining, Inc.; Midtown. Manufacturing; Midville Tool & Die Company; Midway Mold, Inc.; Midwest Machine & Manufacturing Co.; Midwest Tool & Die Corporation; Midwest Tool & Engineering Company; Mikim Industries, Inc.; Mil-Craft Manufacturing, Inc.; Mil-O-Matic; Mil-Tech Machine, Inc.; Millard's Tooling & Grinding, Inc.; Millat Industries Corp.; Miller Machine & Design, Inc.; Miller Mold Company; Miller Precision, Inc.; Milrose Industries; Miltronics, Inc.; Milwaukee Punch Corporation; Milwaukee Slide and Spindle; Minco Tool & Mold Corporation; Minnotte Cleveland Corporation; Mission Tool & Manufacturing Co., Inc.; Mitchell Machine & Fabricating; Mitchell Machine & Tool Company; Mitchell Machine Works; Mitchum Schaefer, Inc.; Mittler Brothers Machine & Tool; Mo-Tech Corporation; Mod-Tech, Inc.; Model Die & Mold, Inc.; Model Machine Company, Inc.; Model Pattern Company, Inc.; Modern Industries; Modern Machine Company; Modern Machine, Inc.; Modern Manufacturing, Inc.; Modern Metal Manufacturing, Inc.; Modern Metalsmiths, Inc.; Modern Molds, Inc.; Modern Tools Division (Division of Libbey, Owens, Ford); Moehrle, Inc.; Mohawk Mold & Machine; Mold Systems Corporation; Moldcraft E D M; Monarch Valve Corporation; Monitor Mold & Tool Company; Monks Manufacturing Co., Inc.; Monroe Tool & Die Company; Monterey Precision, Inc.; Montgomery Brothers Machine Company, Inc.; Montgomery Tippett Corporation; Moon Cutter Company, Inc.; Moore Quality Tooling, Inc.; Moore Special Tool Company, Inc.; Morris Machine Company, Inc.; Morris Precision; Morton & Company, Inc.; Motor Machine Co., Inc.; Moulding Specialists, Inc.; Mountain Machine Services; Mountain States Automation; Mt. Penn Tool & Machine Co., Inc.; Muck Engineering, Inc.; Mueller Machine & Tool Company; Muesco, Mallay, Inc.; Multi-Tool, Inc.; Mun Manufacturing Company; Munn Engineering Company, Inc.; Mushro Machine & Tool; Mutual Precision, Inc.; Mutual Tool & Die, Inc.; Myers Industries; MAC Tool & Die, Inc.;

N B Enterprises; N C; N C S, Inc.; N E T & Die Company, Inc.; N K R Precision Manufacturing Co.; N L T Enterprises, Inc.; Namco Precision, Inc.; NanBil Wire Cut Company; Nardon Manufacturing Company, Inc.; Nash Machine Company, Inc.; Nashville Machine Company, Inc.; Natco Machine & Welding Co., Inc.; National Manufacturing Co., Inc.; National Molding Corporation; Nationwide Precision Products Corp.; Native Industries, Inc.; Neal Manufacturing, Inc.; Nefor Engineering & Mfg., Inc.; Nelms-Donham Machining, Inc.; Nelson Brothers & Strom Co., Inc.; Nelson Engineering; Nelson Engineering Company, Inc.; Nelson Precision Drilling Co., Inc.; Nelson Thread Grinding; Nerjan Development Company; New Age Manufacturing Co., Inc.; New Deal Tool & Machine (Division of NDT Industries, Inc.); New England Die Company, Inc.; New England Tool Company; New River Precision Machine Co.; New Stanton Machining & Tooling Inc.; New Ulm Precision Tool; New-Co Technologies; Newbrook Machine Corporation; Newington Manufacturing, Inc.; Newman Machine Company, Inc.; Newman Machine Works; Newman Stamping & Machine, Inc.; Newport Aeronautical Sales; Newport Controls, Inc.; Newport Tool & Die, Inc.; Niagara Punch & Die Corporation; Nicolson Cutter; Nieman Machine Company; Nifty Bar, Inc.; Nijon Tool Company, Inc.; Nitschke Tool & Die; Noble Tool Corporation; Norco Tool Grinding, Inc.; Nordon Tool & Mold Company; Nores Precision, Inc.; Norfil Manufacturing; Norfolk Specialties, Inc.; Norman Noble, Inc.; Normandy Metals, Inc.; Normike Industries, Inc.; Norris Precision Manufacturing; North Central Tool and Die; North Coast Grinding, Inc.; North Coast Machining; North Coast Tool & Mold Corporation; North Easton Machine Company; North Florida Tool Engineering, Inc.; North Star Design, Inc.; Northeast Manufacturing Co., Inc.; Northeast Tool & Manufacturing Co.; Northern Machine Tool Company; Northern Manufacturing & Engineering, Inc.; Northridge Precision Machining; Northwest Machine Works, Inc.;

Northwest Machine, Inc.; Northwest Precision Tool, Inc.; Northwest Swiss-Matic, Inc.; Northwest Tool & Die Company; Norvs Molds; Nova Tool & Mold, Inc.; Novi Precision Products, Inc.; Numeric Machine Products; Numeric Machining Co., Inc.; Numerical Precision, Inc.; Numerical Precision, Inc.; Numerical Productions, Inc.; Nutmeg Precision Company; NuTec Tooling Systems, Inc.; O & S Machine & Tool Co., Inc.; O-A, Inc.; O A R Tool & Die, Inc.; O E M Industries, Inc.; O J Hanratty Machine; O K Dies, Inc.; O'Keefe Ceramics; Oakley Die & Mold Company, Inc.; Obars Machine & Tool Company; Oette Tool & Die Company; Ohio Gasket & Shim Company; Ohio Machine & Mold Company; Ohio Transitional Machine & Tool, Inc.; Ohlemacher Mold & Die; Ohler Manufacturing Company, Inc.; Ohlinger Industries, Inc.; Olazaba Enterprises; Olin Tool & Machine, Inc.; Olmsted Engineering Company; Omark Industries; Omega Tool & Die, Inc.; Omega Tool, Inc.; Omni Tool, Inc.; Omnitec Precision; Omnitool, Inc.; Onondaga Machine Company, Inc.; Orange Tool Company, Inc.; Orbit Mold Corporation; Orbit Tool & Die Corporation; Osborn Fabricators, Inc.; Osborn Products, Inc.; Osley & Whitney, Inc.; Osuch Tool & Die; OTMI, Inc.; P & A Tool & Die, Inc.; P & D Machine Company; P & J Tool Company, Inc.; P & K Tool & Production Company; P & M Quality Machining Co.; P & M Screw Machine Products; P & N Machine Company, Inc.; P & P Mold & Die; P & R Industries, Inc.; P C S Company; P K Tool & Manufacturing Company; P R B Metal Products, Inc.; P R Machine Works, Inc.; P T L Manufacturing, Inc.; P. M. I. Motion Technologies; Pace Precision Products, Inc.; Pacific Machine Works; Pacific Sky Supply, Inc.; Pacific Tool & Die, Inc.; Pact Manufacturing Company; Pahl Tool Services; Pak Devices, Inc.; Pal-Vin Machine, Inc.; Palma Tool & Die Company, Inc.; Palmer Custom Machinery Corp.; Palmer Manufacturing Company; Palo Verde Machine Products; Pan-O-Gray, Inc.; Pan-Tec, Inc.; Paragon Die & Engineering Company; Paragon Machine & Tool; Paragon Machine, Inc.; Parallax, Inc.; Paramount Die Mold, Inc.; Paramount Machine & Tool Corp.; Park Hill Machine, Inc.; Parker Plastics Corporation; Parkview Metal Products; Parm Tool & Die Company; Parr-Green Mold and Machine Co.; Parris Tool & Die Company; Parrish Machine Company, Inc.; Pasco Tool & Die, Inc.; Patco Machine & Fab, Inc.; Patell Industrial Machine Co., Inc.; Path Technologies; Patterson Gear & Machine; Paumier Company, Inc.; Pe-Ce Design; Peachtree Tooling Corporation; Peerless Precision, Inc.; Peerless Tool & Die Corporation; Pegasus Company, Inc.; Pego Corporation; Peko Precision Products; Pell Engineering, Inc.; Pellegrin Machine & Tool; Penco Precision; Pendleton Tool Company, Inc.; Penn State Tool & Die; Penn United Tech, Inc.; Penn-Erie Manufacturing, Inc.; Pennco Tool & Die, Inc.; Pennoyer-Dodge Company; Pennsylvania Crusher; Pennsylvania Tool & Gages, Inc.; Pentagon Die & Manufacturing, Inc.; Peraza Tool and Mold, Inc.; Perfect Mold Company, Inc.; Perfect-A-Tec Corporation; Perfection Mold & Machine Company; Perfection Tool & Mold; Perfection Tool & Mold; Perfecto Tool & Engineering Company; Performance Plastics East; Performance Unlimited, Inc.; Perry Tool & Research Company; Pesco Company; Petersen Precision Engineering Co.; Phase, Inc.; Phelps Tool & Die Company; Phil-Coin Machine & Tool Co., Inc.; Phillips Bros. Tool & Die, Inc.; Phinney Tool & Die Company; Phoenix Grinding; Phoenix Machining Corporation; Phoenix Manufacturing, Inc.; Phoenix Tool & Gage, Inc.; Pickard Cutter Grinding, Inc.; Piece-Maker Company; Piedmont Tool & Mfg. Co., Inc.; Pier Tool & Die, Inc.; Pierce Products, Inc.; Pinehurst Tool & Die; Pinnacle Engineering Company; Pinnacle Manufacturing Co., Inc.; Pinnacle Precision, Inc.; Pioneer Broach Company; Pioneer Machine Products; Pioneer Precision Grinding, Inc.; Pioneer Tool & Die Company; Pioneer Tool & Die, Inc.; Pioneer Tool Die & Machine; Pivot Punch Corporation; Pivot Punch-Zip Industrial Products; Plainfield Tool & Engineering, Inc.; Plainville Manufacturing Co., Inc.; Plainville Products Corporation; Plant 7 Machine & Tool; Plas Tool Company; Plasma Technology Incorporated; Plasma-Tec, Inc.; Plastic & Metal Forming; PlasTech Mold Company; Plaza Tool & Die Corporation; Pleasant Precision; Plesh Enterprises, Inc.; Pleune Technology; Pohland Enterprises, Inc.; Pol-Tek Industries, Ltd.; Poly Pro, Inc.; Polyphase Machine Company, Inc.; Polytec Products Corporation; Pompano Precision Products; Poplar Machine Co., Inc.; Port City Machine & Tool Company; Porter Precision Products; Posa-Cut Corporation; Powder Metallurgy Company; Powill Manufacturing & Engineering, Inc.; Practical Machine, Inc.; Practical Mechanics Inc.; Prather Engineering, Inc.; Pre-Mec Corporation; Preac Tool Company, Inc.; Precise Engineering Company; Precise Jig Grinding, Inc.; Precise Machine & Etching, Inc.; Precise Mold & Die, Inc.; Precise Plastic Products, Inc.; Precise Products Company; Precise Products Corporation; Precise Punch Products; Precise Tool & Engineering Company; Precision Aerospace Components, Inc.; Precision Aerospace Manufacturing, Inc.; Precision Balancing & Analyzing Co.; Precision Boring Company; Precision Broach Corporation; Precision Carbide Products; Precision Deburring Enterprises, Inc.; Precision Die & Stamping; Precision Drilling & Tapping; Precision E D M; Precision Electronic Metal; Precision Engineering & Mfg. Co.; Precision Engraving & Machine Co.; Precision Fabricating, Inc.; Precision Fluid Power, Inc.; Precision Gage & Tool Company; Precision Gage, Inc.; Precision Grinding & Manufacturing; Precision Grinding, Inc.; Precision Grinding, Inc.; Precision Honing Corporation; Precision Identity Corporation; Precision Industries, Inc.; Precision Machine & Engineering, Inc.; Precision Machine & Tool Co., Inc.; Precision Machine & Welding; Precision Machine Company; Precision Machining Company; Precision Machining Company, Inc.; Precision Masters, Inc.; Precision Measuring Corp.; Precision Metal Works; Precision Metalcraft; Precision Mold & Engineering, Inc.; Precision Mold & Pattern; Precision Mold & Tool, Inc.; Precision Mold Base Corporation; Precision Mold Welding, Inc.; Precision Molds, Inc.; Precision Products of Tennessee; Precision Products, Inc.; Precision Small Parts, Inc.; Precision Specialties; Precision Spring & Stamping Corp.; Precision Stamping & Tool, Inc.; Precision Stampings, Inc.; Precision Technology Corp.; Precision Technology, Inc.; Precision Tool & Grinding, Inc.; Precision Tool & Manufacturing; Precision Tool & Mold; Precision Tool Company; Precision Tubedraw & Machining, Inc.; Preferred Die & Mold Corporation; Preferred Machine & Tool Products; Preferred Machining Corporation; Premium Plastic Machine, Inc.; Prestige Precision Products, Inc.; PreMAT, Inc.; Prime Engineering; Primeway Tool & Engineering Company; Prince Tool & Die Laboratory, Inc.; Pro-type Industries, Inc.; Pro-Mold, Inc.; Pro-Tech Metal Specialties, Inc.; Pro-Tool Engineering; Process Equipment Company; Product Engineering Company; Production Metal Cutting, Inc.; Production Products; Production Tool & Die Company, Inc.; Producto Machine Company; Professional Instruments; Progage; Progress Design & Machine, Inc.; Progressive Die & Automation, Inc.; Progressive Die Company; Progressive Tool & Die; Progressive Tool & Die; Progressive Tool Company; Proper Cutter Sales & Service;

Proper Mold & Engineering, Inc.; Prospect Mold & Die Company; Protista Company; Proto-Design, Inc.; Proto-Stamp Tool & Die, Inc.; Protonics Engineering Corp.; Prototype & Plastic Mold Co., Inc.; Prototype Model & Mold Corporation, Inc.; ProMold, Inc.; Pruden Tool & Die Company, Inc.; Punch Press Products, Inc.; Punchcraft Company (Division of Masco Industries, Inc.); Puritan Machine Company, Inc.; Putoma Corporation; Pylon Tool Corporation; Pyper Tool & Engineering; POFCO; Q M S Machining & Tool Corporation; Quabbin Industries, Inc.; Quality Circle Corporation; Quality Die & Machine Company; Quality Die & Mold Corporation; Quality Engineering Services, Inc.; Quality Grinding & Machining, Inc.; Quality Grinding Corporation; Quality Machine Company, Inc.; Quality Manufacturing Company; Quality Manufacturing, Inc.; Quality Mold & Die, Inc.; Quality Mold & Engineering, Inc.; Quality Plus, Inc.; Quality Precision Machine Works, Inc.; Quality Stamping Co., Inc.; Quality Tool & Die; Quality Tool & Die Company; Quality Tool & Die Inc.; Quality Tool Company; Quality Tool, Inc.; Qualontime Corporation; Qualtech Tool & Machine, Inc.; Quintile Industries, Inc.; R & C Mold Company, Inc.; R & D Custom Machine & Tool, Inc.; R & D Gage, Inc.; R & D Machine Company; R & D Machine Corporation; R & D Manufacturing; R & D Tool & Engineering; R & M Manufacturing Company; R & M Mold Manufacturing Co., Inc.; R & R Machine; R & R Tool & Die & Four Slide; R & R Tool & Machine, Inc.; R and R Machine Company; R A Industries; R A M Tool Company; R A Tool Company; R B S Tools, Inc.; R B Tool & Manufacturing Company; R Davis EDM, Inc.; R E A L Precision Grinding Company; R E A Precision Machine Co., Inc.; R F Cook Manufacturing Co.; R H Edrich Precision Corporation; R H Gibson Technologies; R H Harris Company; R I Carbide Tool Company; R J S Corporation; R J S Machine Products; R J S Manufacturing Corporation; R J Stuckel Company, Inc.; R M I; R Meschkat Precision Machining; R N D Limited; R O C Carbon Company; R S I Fabtec; R S Precision Industries, Inc.; R S Tool, Inc.; R Y Tool Company, Inc.; R. D. Hopkin Machine Corporation; R. K. Precision Company; R. L. Barry, Inc./Amic Division (Division of R.L. Barry, Inc.); R. W. Smith Company; R.E.F. Machine Company, Inc.; Radford Machine Works; Rae Tech; Rafferty Machine & Tool, Inc.; Rainbow Tool & Machine Co., Inc.; Ralee Engineering Company; Raloid Corporation; Ram Metal Products, Inc.; Rams Rockford Products, Inc.; Ramsay Welding Research Co., Inc.; Ran-Bro Tool Company; Randolph Machine Company; Ranger Tool & Die Company; Ranoda Electronics; Rapid Die & Engineering; Rapid Grinding & Machine; Rapidac Machine Corporation; Raschke Engraving, Inc.; Ratnik Industries, Inc.; Raven Machine & Tool, Inc.; Ray Lee Cams & Machining, Inc.; Ray Machine, Inc.; Raybon Manufacturing Co, Inc.; Rayco Machine Company; Rayco Manufacturing; Ready Machine Tool & Die Corp.; Realco Tool & Die, Inc.; Rearc Engineering, Inc.; Reardon Machine Co., Inc.; Reber Machine & Tool Company; Red Line Base, Inc.; Reed City Tool & Die; Reed Instrument Company; Reel Tool Company; Regal Mold & Die, Inc.; Regener & Company; Rehrig Pacific Company; Reiam Company, Inc.; Reichert Stamping Company; Reid Industries, Inc.; Reidville Tool & Manufacturing Co., Inc.; Reitz Tool & Die Company, Inc.; Reitz Tool, Inc.; Reliable E D M Company; Reliable Machine Works; Reliable Sharpening Service, Inc.; Reliable Tool & Die, Inc.; Reliance Mold & Tool, Inc.; Reliant Tool, Inc.; Remmele Engineering, Inc.; Remtex, Inc.; Rennco Industries, Inc.; Reno Machine Company, Inc.; Repairtech International, Inc.; Republic Diesel Truck; Republic Tool & Manufacturing Co.; Reserve Industries Corporation; Reuther Mold & Manufacturing Co.; Rhode Island Precision Co., Inc.; Ricci Machine Corporation; Richard Manufacturing Company, Inc.; Richard O. Schulz Company; Richard Tool & Die Corporation; Richards Machine Tool Company, Inc.; Rick's Engraving, Inc.; Rid-Lom Precision Tool; Riddle Machine Company; Ridge Machine & Welding Company; Riggins Engineering, Inc.; Right Tool & Die, Inc.; Rima Enterprises; Ripley Machine Company, Inc.; Ritchie Brothers Research &; Rite-Way Grinding Saw & Tool Co.; Rite-Way Tool & Engineering Company; Ritsema Grinding Company; Rival Precision, Inc.; River Valley Plastics, Inc.; Riverpoint Tool Company, Inc.; Riverside Associates; Riverside Tool & Die, Inc.; Riverview Machine Company, Inc.; Riviera Die & Tool, Inc.; Robert E. Fesus & Associates, Inc.; Robert M. Wohlfeld Company; Roberts Tool & Die Company; Roberts Tool Company; Roberts Tool Company, Inc.; Robertson Machine Company; Roblan Pty, Ltd.; Rochester Gear, Inc.; Rochester Manufacturing; Rochester Precision, Inc.; Rock Tool & Machine Company, Inc.; Rocket Research Company; Rockford Engineered Products Co.; Rockford Jobbing Service; Rockford Toolcraft, Inc.; Rockstedt Tool & Die; Rocon Manufacturing Corporation; Rodak Plastics Company, Inc.; Rodgers Tooling, Inc.; Rogers Associates Tool & Die; Roland Manufacturing Corp.; Romac Electronics, Inc.; Romakk Engineering; Ron Grob Company; Ronal Tool Company, Inc.; Ronlen Industries, Inc.; Ronlo Engineering, Ltd.; Roson Plastics, Inc.; Rotogen Industries; Roy A. Hutchins Company; Royal Industries, Inc.; Royal Manufacturing Company; Royal Tool, Inc.; Royell Manufacturing, Inc.; Ruoff & Sons, Inc.; Ruska Instrument Company; Russell Machine Company; S & H Machine & Engineering, Inc.; S & H Machine Products;

S & L Metal Products Corporation; S & S Automation; S & S Industries; S & S Precision; S & S Precision; S C Manufacturing; S G S Tool Company; S K Industries; S L P Machine, Inc.; S S Industries; S T S Mold Builders, Inc.; S-Three Engineering, Inc.; Sac Tool & Die Shop, Inc.; Sage Machine & Fabricating; Sagehill Engineering, Inc.; Saginaw-Machine Systems, Inc.; Saginaw Products Corporation; Saginaw Tool & Die, Inc.; Sahuaro Precision Grinding Service, Inc.; Salisbury Special Tool; Samson Manufacturing Company; Samuel R. Parry Machine Company; Sandberg Machine & Engineering; Sanders Tool & Mould Company; Sanders Tool Company; Sanders' Tool & Machine Company; Sandor Tool Company, Inc.; Sandr, Inc.; Santa Clara Machining Company; Sargent Specialty & Machine Company; Satellite Aerospace, Inc.; Satellite Precision Company; Satellite Tool & Machine Co., Inc.; Sattler Machine Products, Inc.; Scan O Matic, Inc.; Schafer Gear Works, Inc.; Schaffer Grinding Company, Inc.; Schickling Tool & Engineering Co.; Schill Corporation; Schmiede Machine & Tool Corporation; Schneider & Marquard, Inc.; Schober's Machine & Engineering; Schroeder Tool & Die Corporation; Schucker-Deco Machine, Inc.; Schuetz Tool & Die, Inc.; Schulze Tool Company, Inc.; Schwab & Rieber; Schwartz Industries, Inc.; Schwerdtle Stamp Company; Scorpio Tool & Die, Inc.; Scott County Machine & Tool Co., Inc.; Screw Machine Tool Company; Sears Machine Company; Sebewaing Tool & Engineering Co.; Sectional Die Company; Seel Tool & Die, Inc.; Seico Precision Die, Inc.; Select Tool & Die Corporation; Service Tool & Die Company; Service Tool & Die, Inc.; Service Tool & Mfg. Co., Inc.; Servo Gear Engineering Co., Inc.; Sharp Grinding Company, Inc.; Shaw Industries, Inc.; Shear Tool, Inc.; Sheffield Progressive, Inc.; Shelby Engineering Company, Inc.; Shell Die Mold, Inc.; Shepherd Specialty Machine & Die; Sherman Corporation;

Sherman Tool & Design; Shield Tool & Engineering Co., Inc.; Shubin Tool & Manufacturing Co., Inc.; Sibley Machine & Foundry Corp.; Sibo Tool & Die Company; Sidney Machine Service, Inc.; Sidney Tool & Die, Inc.; Sierra Mold & Engineering Company; . Sifco Custom Machining Company; Signal Machine Company; Silverbrook Manufacturing Co., Inc.; Sintermet, Inc.; Sipco, Inc.; Skeeles Engineering, Inc.; Ski-Way Machine Products Company; Skill Tool & Die Corporation; Skillcraft Machine Tool Company; Skilltronics, Inc.; Skulsky, Inc.; Skyline Manufacturing Corporation; Skylock Industries, Inc.; Skylon Mold & Machining; Skyway Manufacturing Corporation; Skyway Precision Inc.; Slankers, Inc.; Slantco Machine & Tool; Smith Machine & Tool Company; Smith Tool & Die, Inc.; Smith-West; Smithfield Industries, Inc.; Snider Mold Company, Inc.; Solar Tool & Die, Inc.; Soma Engineering & Manufacturing, Inc.; Sonic Tool; South Bend Form Tool Company; South Eastern Machining, Inc.; South Shore Metal Products; South Shore Mold & Tooling Company; South Side Machine Works, Inc.; Southampton Manufacturing, Inc.; Southeast Tool & Machine Corp.; Southeastern Technology, Inc.; Southern Machine & Tool Company; Southern Numerics, Inc.; Southside Machine Company; Southwest Mold, Inc.; Space Craft Manufacturing Co., Inc.; Spaceonics Industries; Spark Technologies, Inc.; Sparro Machine Products, Inc.; Spartan Carbide, Inc.; Spartan Manufacturing Company; Spaulding Machine Co.; Spearhead Automated Systems, Inc.; Special Machine & Engineering, Inc.; Special Parts, Inc.; Special Tool & Engineering Corp.; Special Welding Services, Inc.; Specialty Machines, Inc.; Spectra Technology, Inc.; Spen-Tech Machine Engineering Corp.; Springdale Machine & Gear Company; Springfield Tool & Die, Inc.; Squaglia Manufacturing Company; Square Deal Tool & Die, Inc.; Square Tool & Die Corporation; St. George Machine Tool; St. Louis Tool & Mold; St. Mary Manufacturing Corporation; Stahl Specialty Company; Stamford Tool & Die (Division of Cognitronics Corporation); Stampco Metal Products; Standard Die Supply, Inc.; Standard Jig Boring Service, Inc.; Standler, Incorporated; Stanek Tool Corporation; Stanley Machining & Tool Corp.; Star Gauge; Star Machine Systems; Star Machine, Inc.; Star Precision Machining, Inc.; Star S Manufacturing; Star Tool & Manufacturing, Inc.; Starlite Tool & Die, Inc.; Starn Tool & Manufacturing Company; State Cutter Grinding Service Co., Inc.; State Welding & Fabricating, Inc.; Stauble Machine & Tool Company; Stearns Tool Company; Steel Engineering Company; Steel Products Corp Of Akron, Inc.; Stefco Precision, Inc.; Stenby Tool Company; Stephenson Diversified Cutter Grinding, Inc.; Sterling Engineering Corporation; Sterling Machine Company, Inc.; Sterling Tool Company; Stettnisch Tool & Die; Stevens Manufacturing Company, Inc.; Stevenson Machine Shop; Stewart Industries, Inc.; Stewart Manufacturing Company; Stieg Grinding Corporation; Stillion Industries; Stillwater Technologies, Inc.; Stines Machine; Stinson Machine & Manufacturing Inc.; Stinson Manufacturing Company; Stolle Precision Tool Company; Stone Mountain Machine & Die, Inc.; Stonebridge Corporation; Stoney Crest Regrind Service, Inc.; Stott Tool & Machine Company; Straton Tool & Die Company; Stricker Engineering; Stuart Industries, Inc.; Studwell, Inc.; Stugart Industries, Inc.; Stuhr Manufacturing Company; Sturgis Tool & Die, Inc.; Suburban Manufacturing Company; Suburban Mold & Plastic, Inc.; Suburban Tool & Die Company; Suburban Tool & Manufacturing Co., Inc.; Sullivan Machine Products, Inc.; Summit Engineering Company, Inc.; Summitt Tool & Manufacturing; Sumner Machine & Tool Company; Sun Polishing Company; Sun Up Wireforms, Inc.; Sunbelt Machine, Inc.; Sunbelt Plastics, Inc.; Sunbelt Tool & Die; Sunport Engineering Company; Superior Die & Engineering Company (Division of Krummen Corp.); Superior Die Set Corporation; Superior Die Tool Machine Company; Superior Engineering Company, Inc.; Superior Gear Box Company; Superior Jig, Inc.; Superior Machine & Tool Inc.; Superior Machine Products; Superior Mold Company; Superior Mold, Inc.; Superior Roll Forming Company; Superior Thread Rolling Company; Superior Tool & Die Company; Superior Tool & Die Company, Inc.; Superior Tool, Inc.; Superior Tool, Inc.; Supreme Machine & Manufacturing Inc; Supreme Machine Division; Supreme Machine Products, Inc.; Supreme Tool & Die, Inc.; Surface Manufacturing; Sussex Instrument Corporation; Sutco Manufacturing Company; Swenton Tool & Die Company; Swiss EDM Wirecut, Inc.; Swiss Specialties, Inc.; Swiss Tech; Swiss Wire E D M; Swissco, Inc.; Syn-Tech Mold, Inc.; Syst-A-Matic Tool & Design; Systems Machining Company; Szpak Manufacturing, Inc.; T-K & Associates, Inc.; T C I Aluminum; T D M Corporation; T E T Manufacturing Company, Inc.; T K Industries; T M F Tool Company; T M Machine & Tool; T M Tool Company, Inc.; T R A Industries, Inc.; T-M Manufacturing Corporation; Tade Industries; Tait Design & Machine Company; Tait Grinding Service, Inc.; Talan Machine & Tool, Inc.; Talbar, Inc.; Tana Corporation; Tangent Tool & Die Company; Tangent Tool & Mfg., Inc.; Tapco; Targhee Jig Grinding Company; Taurus Machine, Inc.; Taurus Tool & Engineering, Inc.; Tausz Machine Repair; Tavolacci Manufacturing Company; Taylor Smith, Inc.; Taylor Tool & Die Company, Inc.; Taylor Tool & Machine Company; Team Machine Tool Rebuilders Corporation; Tech Machine & Tool Company; Tech Mold & Tool Company; Tech Mold, Inc.; Tech Ridge, Inc.; Tech Tool & Mold, Inc.; Tech Tool, Inc.; Tech-Etch, Inc.; Techni-Mold & Engineering, Inc.; Techni-Products, Inc.; Technics 2000 Inc.; Technitool, Inc.; Technitri Corporation; Tedco, Inc.; Teledyne Efficient Industries; Tell Tool, Inc.; Tempcraft, Inc.; Temple Screw Machine Products, Inc.; Tempress, Inc.; Tenk Machine & Tool Company; Tennessee Metal Works, Inc.; Tennessee Precision, Inc.; Terrell Sales Corporation; Terrill Motor Machine, Inc.; Teston Machine Corporation; Tetco, Inc.; Teter Tool & Die, Inc.; Tex-Tool Company; Thaler Machine Company; The Adroit Company; The Slaysman Company; The Ultimate Tool & Gage Company; The Will-Burt Company; Therm, Inc.; Thiel Tool & Engineering Co., Inc.; Thiemann Engineering & Manufacturing Company; Thomas Instrument & Machining Co.; Thomas Machine Works, Inc.; Thompson Gundrilling, Inc.; Thor Tool & Die Company; Three D Manufacturing Corporation; Three-Way Pattern, Inc.; Thurm-A-Matic; Tiburzi Machine & Tool Company; Tiger Enterprises, Inc.; Tiger Industries, Inc.; Tiller Tool & Die, Inc.; Tillman Tool Company, Inc.; Time Machine & Stamping, Inc.; Timna Manufacturing Company; Tinker Machining Company, Inc.; Tipco Punch, Inc.; Tipp Machine & Tool, Inc.; Tire Mold Services, Inc.; Tisza Industries, Inc.; Titan Enterprises, Inc.; Titan Tool Company, Inc.; Titan Tool, Inc.; Todd Industries, Inc.; Toledo Machine & Die Company; Tomco Die & Kellering Company; Tomken Tool & Engineering, Inc.; Tool & Die Specialties, Inc.; Tool & Die Systems, Inc.; Tool Craft Company, Inc.;

Tool Gauge & Machine Works, Inc.; Tool Mate Corporation; Tool North, Inc.; Tool Producers, Inc.; Tool Rite, Inc.; Tool Specialties Company; Tool Specialty Company; Tool Steel Products; Tool Technology, Inc.; Tool-Rite Industries; Toolcraft of Phoenix, Inc.; Toolcraft Products, Inc.; Toolcraft, Inc.; Toolex;

Toolex Manufacturing Corporation; Toolex, Inc.; Toolmatic Company; Tools Renewal Company; Top Tool & Die, Inc.; Top Tool Company; Toresco; Tottser Tool & Die Shop; Tower Tool & Engineering, Inc.; Tower Tool & Manufacturing Company, Inc.; Tracey Gear, Inc.; Tramco Mold, Inc.; Tree City Mold & Machine Company; Treffers Precision, Inc.; Tremont Tool & Gage, Inc.; Tresco Tool, Inc.; Trew-Craft Corporation; Tri City Tool; Tri City Tool & Die Company; Tri Craft, Inc.; Tri Kris Company, Inc.; Tri-City Machine Products, Inc.; Tri-City Tool & Die, Inc.; Tri-M-Mold, Inc.; Tri-Mech Industries, Inc.; Tri-R-Tool Company; Tri-State Precision, Inc.; Tri-State Tool & Saw, Inc.; Tri-Versal Mold & Manufacturing Co.; Tri-Wire, Inc.; Triad Tool & Die Company; Triangle Tool Company; Triangle Tool Company, Inc.; Triangle Tool Corporation; Tricon Machine & Tool, Inc.; Trident Tool Company, Inc.; Trimac Manufacturing, Inc.; Trimatek; Trimetric Specialties, Inc.; Trinity Tools, Inc.; Trio Precisioneering, Inc.; Trio Tool & Die, Inc.; Triple Point Manufacturing; Triple Quality Tool & Die, Inc.; Triple Tool & Mfg. Co.; Triplex Industries; Trisan Manufacturing, Inc.; Trotwood Corporation; Trowbridge Machine; Tru Cut Die Corp.; Tru Point Corporation; Tru Tool, Inc.; Tru-Circle Corporation; Tru-Die, Inc.; True Machine Company; True Position, Inc.; True Precision, Inc.; Trueline Tool & Machine, Inc.; Trust Technologies Corp.; Tschida Machine Works; Tucker Machine Company; Tucker Technology, Inc.; Tucson Numerical Machine, Inc.; Tujays Machine Works; Tura Machine Company; Turbo Machine & Tool, Inc.; Turcotte Manufacturing Co., Inc.; Turley Industries; Turners Machine Shop; Twin City Honing Company; Twin City Manufacturing Company; Twinbrook Tool & Mold Company; Twinco Manufacturing Company, Inc.; Twoson Tool Mfg. Company, Inc.; Tymar Machining; TAPCO; U M C, Inc.; U P Machine & Engineering Company; U S Carbide Company; U S Die & Mold Company, Inc.; U. S. Axle, Inc.; Ullieco Machining, Inc.; Ultimate Precision, Inc.; Ultra Cut, Inc.; Ultra Engraving & Machining; Ultra Precision, Inc.; Ultra Precision, Inc.; Ultra Tool & Die, Inc.; Ultra Tool & Manufacturing, Inc.; Ultra-Tech, Inc.; Ultramation, Inc.; Ultron Engineering; Unimach Manufacturing; Union Machine; Unique Instruments, Inc.; Unique Machine Company; Unique Tool & Die Company, Inc.; Unique Tool & Manufacturing; United Carbide Industries, Inc.; United Centerless Grinding; United Engineering Company; United Engineers, Inc.; United Industrial Technologies; United Machine & Tool Co., Inc.; United Skilled; United Tool & Die, Inc.; United Tool & Engineering Company; United Tool & Engineering, Inc.; Unittool Punch & Die Company; Universal Brixius; Universal Machine & Tool Works, Inc; Universal Machine Products; Universal Machine Rebuilders, Inc.; Universal Precision Products Co.; Universal Tool Company; Universal Tools & Manufacturing Co.; Utility Tool & Die Works; Utility Tool & Machine Company; V & M Tool Company, Inc.; V & S Die & Mold, Inc.; V. I. C. Machine Company; Vallee Burring Company, Inc.; Valley Jig Grinding, Inc.; Valley Machine Products, Inc.; Valley Machine Works, Inc.; Valley Manufacturing & Engineering Company; Valley Precision, Inc.; Valley Precision, Inc.; Valley Tool & Die, Inc.; Vals Tool & Die Corp.; Van Engineering; Van Reenen Tool & Die; Van-Am Tool & Engineering, Inc.; Van-Kno Tool & Manufacturing, Inc.; Vanderveer Industrial Plastics, Inc.; Vanguard Technology Corporation; Vanpro, Inc.; Vantage Mold & Tool Company; Variety Stamping Corporation; Variety Tool & Die, Inc.; Varispace Division; Vaughn Manufacturing Company, Inc.; Veit & Young, Inc.; Veldon Manufacturing, Inc.; Venango Machine Products, Inc.; Ventura Industries, Inc.; Venture Precision Machining Co.; Versa-Mil, Inc.; Versa-Tool Manufacturing, Inc.; Versatile Machine Company, Inc; Versatile Tool & Die; Vescio Threading Company; Vi-Tec Manufacturing; Victor Plastics, Inc.; Victory Machine Tools; Viking Tool & Engineering; Viking Tool & Gage, Inc.; Village Tool & Machine Company; Vim Systems, Inc.; Vimco; Visger Precision, Inc.; Vitco Nuclear Products, Inc.; Vitron Manufacturing, Inc.; Vobeda Machine & Tool Company; Vogform Tool & Die Company; Volkert Precision Technologies, Inc.; Volumatic, Inc.; Von Donen Precision, Inc.; Voshage Machine, Inc.; Voss Manufacturing, Inc.; Vulcan Engineering & Manufacturing,; Vulcan Forge & Machine Company; Vulcan Tool Corporation; Vulcan Tool of Iowa; W & H Stampings, Inc.; W B Tool & Die; W C Kirby & Son, Inc.; W D & J Machine & Engineering; W Derosier Mold & Machine; W G Strohwig Tool & Die, Inc.; W H Jones & Son, Inc.; W J Snyder Gear Corporation, Inc.; W S Demoss & Son, Inc.; W T X Industries, Inc.; W Westhall & Son, Inc.; W. Dempt Company; Wacker Development, Inc.; Waggoner Brighton, Inc.; Wagner Engineering, Inc.; Walbrun Tool, Inc.; Walco Tool & Engineering Corp.; Walerko Tool & Engineering Corp.; Walker Tool & Die, Inc.; Walker Tool & Machine Company; Waltco Engineering, Inc.; Walter Tool & Mfg. Inc.; Waltz Brothers, Inc.; Walz Deburring Specialists, Inc.; Ward Manufacturing Company, Inc.; Washington Scientific Industries, Inc.; Wayne Smith Company; Weatherby Tool & Die, Inc.; Weatherford Tool & Die; Weaver Diversified Mfg., Inc.; Weaver Machine & Tool Company, Inc.; Webb Design Service; Webster Tool & Die, Inc.; Weco Metal Products; Wejco Instruments; Weld Lab; Weldex Sales, Inc.; Weldments of Florida; Weldun International; Well Built Manufacturing Company; Wells Machine Company, Inc.; Wemco Precision Tool; Werkema Machine Company, Inc.; Wes-Mar, Inc.; Wesco Machine, Inc.; Wess Plastic, Inc.; West Coast Industries, Inc.; West Engineering Company, Inc.; West Georgia Tool & Die, Inc.; West Hartford Tool & Die Company; West Haven Buckle Company; West Milton Precision Machine; West Point Foundry and Machine; West Tool & Manufacturing, Inc.; West Warwick Machine Company, Inc.; Westbrook Industries, Inc.; Westbrook Manufacturing, Inc.; Westco Manufacturing Co., Inc.; Wester Tool & Machine Company; Western Machine & Manufacturing; Western Machining, Inc.; Westfield Gage Company, Inc.; Westfield Tool & Die, Inc.; Westhoff Tool & Die Company; Westlake Tool & Die Manufacturing; Westwood Precision, Inc.; Wesval, Inc.; Wetmore Cutting Tools; Whip's Tool & Cutter Grinding; White Machine; White Machine, Inc.; Whitehead Tool & Die, Inc.; Wichita Tool Company; Wiegel Tool Works, Inc.; Wikstrom Machines, Inc.; Wilco Die Tool Machine Company; Wilco Industries, Inc.; Wilderness Mold, Inc.; Wilhite Industries, Inc.; Will-Mor Engineering Company, Inc.; Willard Machine Corporation; William Kanes Manufacturing Corp.; William Sopko & Sons Company, Inc.; Williams Machine Company, Inc.; Wilsey Tool Company, Inc.; Wilson Products, Inc.; Windsor Tool & Die, Inc.; Wingard & Company, Inc.; Wire Cut Company, Inc.; Wire Tech; Wire Tech E D M, Inc.; Wirecut E D M, Inc.; Wirecut Technologies; Wisconsin Drill Head Company; Wisconsin Engraving Company; Wisconsin Machine Shop, Inc.; Wissota Enterprises; Witte Machine Products, Inc.; Woldring & Associates; Wolfe & Swickard Machine Co., Inc.; Wolverine Bronze Company; Wolverine Tool Company; Woodhaven Telesis Corporation; Woodruff Corporation; Woody's Precision Grinding; Wright & Company; Wright Industries, Inc.; Wright-K Technology, Inc.; Wythe Precision Machine Co., Inc.; X L Tool & Machine Corporation; Xolox

Corporation; Y Tec Manufacturing, Inc.; Yeoman Engineering, Inc.; York Machine Tool & Die Company; Yorktown Tool & Die Corporation; Youngers and Sons Manufacturing; Youngwood Electric Metals West; Z-R Laboratory; Zarlenga Industries, Inc.; Zims Manufacturing Company; Zip Tool & Die Company, Inc.; Zircon Precision Products, Inc.; Zovamax, Inc.; Zuelzke Tool & Engineering.

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Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200 and 206
Home Equity Conversion Mortgage Insurance Demonstration; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-88-1415; FR-2481]

Home Equity Conversion Mortgage Insurance Demonstration

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Part 206 to Title 24, Chapter II of the Code of Federal Regulations. The proposed rule implements section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a demonstration program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash. A total of 2,500 mortgages may be insured under this demonstration up to September 30, 1991.

DATE: Comment due date: December 27, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment will be available for public inspection during regular business hours at the above address.

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The public is invited to send comments on these requirements to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Housing and Urban Development.

FOR FURTHER INFORMATION CONTACT: Judity V. May, Office of Economic Affairs, (202) 755-5426, Room 8218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Purpose

Section 255 of the Act authorizes the Secretary to insure mortgages to assist elderly homeowners in converting the equity in their homes into cash. The demonstration is to be designed to meet the special needs of elderly homeowners by reducing the economic hardship of meeting health, housing and subsistence costs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated equity into cash. The demonstration should also encourage and increase the involvement of mortgagees and other participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners. The demonstration should produce data on the types of mortgages which best serve the interests of elderly homeowners, mortgagees and the Federal Government. With this data, determinations can be made on the appropriate scope and nature of HUD insurance in facilitating the use of equity conversion mortgages by the elderly.

The demonstration has been designed for homeowners 62 years of age or older who own their homes with little or no outstanding mortgage debt. It is anticipated that the homeowners who will participate in this demonstration will have substantial equity in their homes, but may have few other sources of income.

2. General Overview

Unlike traditional residential mortgages, loan proceeds in a home equity conversion mortgage are not paid to the mortgagor in one lump sum but are paid over an extended period, and the mortgagor repays the loan in one payment rather than through periodic payments. The home equity conversion mortgages to be insured under this demonstration also differ from traditional mortgages and some other types of home equity conversion mortgages in that they have neither a fixed maturity date nor a fixed mortgage amount. The Department proposes to insure several basic kinds of mortgages: (1) Tenure, (2) term, and (3) line of credit. These mortgages may bear interest at either a fixed or an adjustable rate. The Department also proposes to insure fixed rate tenure mortgages that provide for shared appreciation between the mortgagor and the mortgagee.

Tenure mortgages (§§ 206.19(a) and 206.21(a)) provide for monthly payments from the mortgagee to the mortgagor for as long as either the mortgagor occupies the home as a principal residence, or another event occurs that causes the mortgage to come due. Term mortgages (§§ 206.19(b) and 206.21(b)) provide for monthly payments from the mortgagee to the mortgagor for fixed periods agreed upon between the mortgagee and the mortgagor. When the period expires, the monthly payments cease, but the mortgage does not become due and payable until the mortgagor no longer occupies the home as a principal residence, or another event occurs that causes the mortgage to come due. Under a line of credit mortgage (§ 206.23), the mortgagor informs the mortgagee when a disbursement is desired, at times and in amounts of the mortgagor's choosing. When the line of credit is exhausted, the mortgage does not become due and payable until the mortgagor no longer occupies the home as a principal residence, or another event occurs that causes the mortgage to come due.

Section 255(j) of the Act provides that the Secretary may not insure a mortgage unless the mortgage documents contain provisions to prevent the elderly homeowner from being displaced from the home. The mortgagor could not be forced to sell the home to pay the mortgage as long as the mortgagor continued to occupy the home as a principal residence, subject to narrow exceptions requiring HUD consent, even though the mortgage principal balance, including accrued interest and mortgage insurance premiums (MIP), grows to

exceed the value of the property. The proposed rule at § 206.27(c) covers this point.

When the mortgage does come due, the mortgagee's recovery will be limited to the value of the home, as required by section 255(d)(7) of the Act. There will be no deficiency judgment taken against the mortgagor or the estate. The proposed rule at § 206.27(c) also covers this point.

If the mortgagee is unable to satisfy the mortgage debt from the net proceeds from the sale of the property, the mortgagee files a claim for the difference. The maximum claim amount which the mortgagee may obtain is limited by section 255(g) of the Act. The limit is the maximum dollar amount for a mortgage on a one-family residence that the Secretary is authorized to insure in a geographical area under section 203(b)(2) of the Act. At the present time, this amount ranges between $67,500 and $101,250 (and can be increased by 50% under section 214 of the Act for properties located in Guam, Hawaii and Alaska). This limit on claims is defined in § 206.3 as the "maximum FHA claim amount."

3. Mortgage Insurance Premium

The mortgagor will pay a mortgage insurance premium (MIP) to reduce the risk of loss in the event that the mortgage principal balance, including accrued interest and MIP, exceeds the value of the property at the time that the mortgage is due and payable. The mortgagee will collect the MIP from the mortgagor by adding it to the mortgage principal. The same MIP will be charged for all of the types of mortgages included in this demonstration. It will consist of an initial premium of two percent of the lesser of the appraised value of the property or the maximum FHA claim amount and an annual premium of one-half of one percent on the outstanding mortgage principal balance, including accrued interest and previous MIP. See § 206.105.

HUD has fixed the MIP so that, for every mortgage, the present value of the expected MIP equals the present value of the expected losses taking into account the life expectancy of the borrower and the possibilities for property appreciation or depreciation. By fixing the MIP, HUD has fixed the amount of risk that it estimates will be borne by HUD and private lenders. A technical explanation of the MIP and the model used to determine payments to mortgagors is provided in a technical explanation later in this preamble.

The MIP is estimated to cover all losses, whether these losses are borne by HUD or by private lenders. Consequently, at the time that a mortgage is closed, a mortgagee will have the opportunity to choose one of two options: (1) The assignment option, or (2) the coinsurance option. See § 206.107. Under the assignment option, all of the MIP collected by the mortgagee from the mortgagor is paid to HUD, and the mortgagee has the option of assigning a mortgage to HUD at the time that the mortgage principal balance, including accrued interest and MIP, equals the maximum FHA claim amount. The Act authorizes the assignment option, which ensures that mortgagees do not have to hold mortgages indefinitely without knowing the maximum term and amount and do not bear any risk of a loss in excess of the FHA claim payment. The coinsurance option provides an incentive to a mortgagee to forego assignment and bear the risk of a loss in excess of the FHA claim payment. Under the coinsurance option, the mortgagee foregoes the right to assign a mortgage to HUD, and it retains a portion of the periodic MIP to compensate for the share of risk borne. HUD will pay the mortgagee the difference between the mortgage principal amount, including accrued interest, MIP and certain adjustments, and the sales proceeds at the time that the mortgage is due and payable up to the maximum FHA claim amount. A mortgagee who elected the assignment option but decided not to exercise it could similarly file a claim at the time that a mortgage is due and payable. Mortgagees who forego assignment and mortgagees who elect the coinsurance option will bear the portion of the losses that exceed the maximum FHA claim amount.

4. Payments to Mortgagors

Payments to mortgagors will be determined using factors or a computer model provided by the Secretary. See § 206.29. Generally, monthly payments under tenure mortgages will be lower than those under term mortgages, and the aggregate monthly payments available under a term mortgage are comparable to the aggregate amount of payments available under a line of credit mortgage. Monthly payments under a shared appreciation tenure mortgage are expected to be higher than under a tenure mortgage without shared appreciation. After consultation with a housing counselor and a mortgagee, elderly homeowners can select the mortgage best suited to their needs.

Payments to mortgagors who choose a tenure mortgage will be based upon the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. The expected average mortgage interest rate is the fixed rate for a fixed rate mortgage and is the 15-year fixed rate for adjustable rate mortgages. The 15-year fixed rate is used because it is the market's best estimate of interest rates for a mortgage with this term, which is comparable to the likely term for a typical mortgage under this program. The expected average mortgage interest rate is used only for determining payments for tenure mortgages or the principal limit for term and line of credit mortgages. Actual interest accrues on the mortgage principal balance at the fixed or adjustable rate agreed upon between the mortgagee and mortgagor.

A principal limit is used to determine payments to mortgagors who choose term or line of credit mortgages. It is based on the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. Theoretically, the principal limit at origination is the maximum amount that a mortgagor could draw upfront under a line of credit if the mortgagor were to make no other draws, allowing for subsequent accrual of interest and MIP and the constraint that the present value of the expected mortgage insurance premium must equal the present value of the expected losses. Practically, the principal limit is the future value used by the mortgagor and mortgagee in selecting a fixed term for a term mortgage, and, when reduced by the outstanding mortgage principal balance, is the limit on the remaining draws that can be made under a line of credit mortgage.

5. Shared Appreciation Tenure Mortgages

To increase the payments available to mortgagors who choose a tenure mortgage, HUD will coinsure fixed rate shared appreciation tenure mortgages. See §§ 206.19(c) and 206.107(b). Mortgagees who offer shared appreciation tenure mortgages must also offer both fixed rate and adjustable rate tenure mortgages without shared appreciation. A mortgagee will be required to disclose to a mortgagor the mortgage interest rate and the monthly payments available to the mortgagor under all three options.

Monthly payments to the mortgagor under a tenure mortgage with shared appreciation will be determined in the same manner as payments under a tenure mortgage without shared

appreciation. As described above, monthly payments will be based on the age of the youngest mortgagor, the lesser of the appraised value of the property or the maximum FHA claim amount, and the mortgage interest rate. By offering a lower mortgage interest rate for tenure mortgages with shared appreciation, the mortgagee will be able to offer the mortgagor higher monthly payments in return for a share of the net appreciated value of the property at the time that the mortgage is due and payable, subject to an effective interest rate cap.

The percentage of net appreciated value to be paid to the mortgagee, known as the appreciation margin, cannot exceed 25 percent. If the mortgage principal balance at the time of sale is less than the appraised value of the property at the time of origination, the mortgagee's share of net appreciated value is calculated by subtracting the appraised value at origination from the adjusted sales proceeds (i.e., sales proceeds less sales costs and capital improvements costs incurred by the mortgagor, but excluding liens other than the insured mortgage) and multiplying by the appreciation margin. If the mortgage principal balance is greater than the appraised value at origination but less than the adjusted sales proceeds, the mortgagee's share of net appreciated value is calculated by subtracting the mortgage principal balance from the adjusted sales proceeds and multiplying by the appreciation margin. If the mortgage principal balance is greater than the adjusted sales proceeds, net appreciated value is zero.

The limits on the mortgagee's share of net appreciated value and the effective interest rate combine so that the mortgagee will receive a full 25 percent of appreciation for properties that appreciate at an annual rate of approximately three percent and will receive nearly the same dollar amount for properties that appreciate at a faster rate, but the mortgagee's risk of loss will decline as the rate of appreciation increases. The cap on the effective interest rate prevents windfall gains to mortgagees from rapid appreciation.

Shared appreciation tenure mortgages can only be insured under the coinsurance option. Mortgagees will receive a coinsurance premium and protection from losses up to the maximum FHA claim. Mortgagees may not file claims for loss of anticipated shared appreciation.

Effective interest rate means the mortgagee's share of net appreciated value plus interest accrued within the last 12 months of the mortgage divided by the sum of the payments made within those 12 months and the mortgage principal balance at the beginning of the 12-month period. The effective interest rate cannot exceed 20 percent.

6. Other Mortgage Origination Items

A. Issuing Reservations of Insurance Authority

A mortgagee must be a HUD approved mortgagee in order to participate in this program. HUD proposes to issue reservations of insurance authority to mortgagees who wish to originate mortgages under this demonstration. See § 206.11. A mortgagee may apply for a minimum of ten and a maximum of fifty reservations at one time. A mortgagee may receive fewer reservations than requested, at HUD's discretion. If the reservations are not used within six months, they expire and can be reissued to other applicant mortgagees. Reservations may be extended for an additional three month period of time if the mortgagee has an application pending and requests the extension. A mortgagee may apply for additional reservations after an issued reservation is used or expires. A mortgagee which intends to only purchase and hold mortgages insured under this part does not need to apply for reservations of insurance authority, but can participate as a holding mortgagee if it meets the existing HUD requirements as a HUD approved mortgagee.

HUD proposes to allow all types of HUD approved mortgagees to participate in the demonstration. Loan correspondents which do not hold insured mortgages will have to demonstrate, as part of their application for reservations of insurance authority, that they will be able to sell each mortgage that they originate to their sponsors. See § 206.11(e).

During the first six months of the demonstration, reservations will be allocated among the ten HUD Regions in proportion to each region's share of the Nation's elderly homeowners. After this six-month period, reservations will be available on a first come, first served basis. A mortgagee may receive fewer reservations than requested, at HUD's discretion. If the reservations are not used within six months, they expire and will be reallocated to other applicants.

HUD will publish a notice prior to publication of a final rule for this demonstration informing mortgagees how, when, and where to apply for reservations of insurance contract authority. The reservations will be available once the final rule is published. These early applications for reservations will assist HUD in establishing priorities among geographical areas for the training of housing counselors.

B. Counseling

Section 255(d)(2)(B) of the Act requires mortgagors to receive "adequate counseling by a third party (other than the lender)" as detailed in section 255(f). Section 206.41 of the proposed regulations explains the statutory requirements and lists items to be included in counseling.

HUD currently certifies housing counseling organizations to provide comprehensive counseling services, with an emphasis upon mortgage default and rent delinquency counseling. Currently, approximately 475 public and nonprofit entities are certified. These organizations are also authorized to provide home equity conversion counseling, but very little home equity counseling has been done to date.

HUD proposes to use the HUD housing counseling network as the basis for the counseling services which are required to be provided under this demonstration. It will also certify additonal organizations that specialize in home equity conversion mortgage counseling. One or two staffers from each new and existing counseling organization will receive training in home equity conversion counseling. Priority will be assigned to training counselors in those areas where mortagees intending to originate mortgages under this demonstration are located. As noted above, applications for reservations of insurance contract authority will be used in setting training priorities.

HUD proposes to work with Administration on Aging (AoA), a part of the Department of Health and Human Services, in involving State units on aging in identifying existing home equity conversion counseling organizations for certification by HUD, and in identifying State social services and alternative home equity conversion mechanisms which may obviate a mortgagor's need for an FHA-insured home equity conversion mortgage. Existing and new housing counseling organizations will be instructed to develop a working relationship with Area Agencies on Aging for assistance in identifying services for the elderly.

C. Mortgage Instruments

HUD has proposed a new approach to mortgage instruments for its single family mortgage insurance programs under which HUD would cease its practice of developing approved mortgage forms, 53 FR 25434 (July 6,

1988), requiring instead that mortgagees incorporate HUD-drafted uniform covenants into forms developed by mortgagees. HUD proposes to adopt this approach for this demonstration. A special set of uniform covenants will be prescribed. The Department also proposes to require a Loan Agreement which will contain details about disbursement of loan proceeds. The Department requests information regarding any State laws that impose requirements on note and mortgage documentation for home equity conversion mortgages, shared appreciation mortgages, and home equity line of credit mortgages which go beyond the requirements applicable to traditional residential notes and mortgages.

D. Building Standards, Repair, Lead-Based Paint Poisoning Prevention

In the Department's single family mortgage insurance programs, the property to be mortgaged is appraised to ensure that it will serve as adequate security for the mortgage. This aspect of mortgage insurace underwriting is especially important under the demonstration, as the principal and interest owed under the mortgage will increase, not decrease. Thus, it is imperative that eligible properties meet the property standards of the Secretary, see § 206.47. The Department proposes that mortgagees use existing HUD handbooks pertaining to building standards (HUD Handbook 4905.1) and appraisals (HUD Handbook 4154.1 and 4150.1). Properties that do not meet the property standards must be repaired in order to be eligible under this demonstration. The mortgage loan may be closed prior to the initiation of the repairs if the mortgagor and mortgagee enter into a repair loan agreement ensuring that repair funds included in the initial mortgage payment are properly used. The mortgagee will be responsible for supervising the repair work in order to ensure that the work is properly completed.

The Department recently published a final rule at 53 FR 20790 (June 6, 1988) implementing the amendments to the Lead-Based Paint Poisoning Prevention Act (LPPPA) which were contained in section 566 of the Housing and Community Development Act of 1987 (1987 Act). As this final rule is written, a property constructed prior to 1987 would have to meet LPPPA requirements prior to the endorsement of a mortgage for insurance. The provisions of the LPPPA rule, which is aimed at preventing lead poisoning in children, would prevent an elderly person for whom this demonstration is designed, but who does not have the funds available to abate the defective paint conditions, from obtaining an insured home equity conversion mortgage.

Section 566(e) of the 1987 Act contains exceptions to the amendments to the LPPPA. One of the exceptions provides that section 566 is not to be applicable to "housing for the elderly or handicapped, except for any dwelling in such housing in which any child who is less than seven years of age resides or is expected to reside." Mortgagors under the home equity conversion mortgage insurance demonstration are required by section 255 to be 62 years of age or older, and thus, this exception in the amendments to the LPPPA should usually be applicable. However, the Department recognizes that exceptions may occur, for example, where grandchildren reside with grandparents

In order to avoid the application of the LPPPA regulations to properties which are occupied only by elderly persons, HUD proposes at § 206.45(d) to exempt from the LPPPA regulations cases where the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling. Thus, even if the property has a defective paint surface, treatment under the LPPPA regulations would not be required as the exception in section 566(e) of the LPPPA would apply. However, in the absence of a certification, treatment of a defective paint surface would be required for a pre-1978 property. HUD proposes to amend § 200.810 of the LPPPA regulations to provide that the abatement could be performed after the mortgage is endorsed for insurance. The repairs would be made in accordance with the proposed repair work provisions contained in § 206.47.

E. Loan Origination Fee

In § 206.31(a), the Department proposes to allow the mortgagee to charge a loan origination fee, but the Department would reserve the authority to establish limitations on the amount of such charge which could be financed as part of the mortgage. This approach to loan origination was proposed for most current single family programs at 53 FR 15408 (April 29, 1988). The preamble to that rule indicated that the Department expected to limit the amount of the charge which could be financed to 1% of the original principal balance, or 2½% of the portion of a mortgage attributable to repair or rehabilitation plus 1% on the rest of the original balance. HUD would consider establishing similar limits on the amount of the fee which could be financed for this program; although the 1% would be based on the lesser of the appraised value of the property or the maximum FHA claim amount.

Because of the nature of the mortgage, it is proposed that discount points may not be charged. Discount points are charged to adjust the coupon rate on a lump sum, fixed term payment to the current market rate of interest. They are calculated as a percentage of the lump sum payment to the mortgagor. Under a home equity conversion mortgage, there is no comparable lump sum payment, and, in fact, neither the mortgage principal amount nor the term of the mortgage is known in advance. Consequently, there is no basis for calculating an upfront lump sum adjustment to the mortgage interest rate. Mortgagees can accomplish the objective of discount points by setting the mortgage interest rate as close in time to the loan closing as is consistent with the requirements of disclosure.

F. Direct Endorsement

Because most mortgagees are unfamiliar with home equity conversion mortgages, HUD does not intend to permit the use of Direct Endorsement under this demonstration.

G. ARMs Disclosure

HUD proposes to accept compliance with the recently published disclosure requirements of the Federal Reserve Board for adjustable rate mortgages as a substitute for imposing its own disclosure requirements in the case of term and tenure mortgages. We are proposing this approach on the assumption that the Board will regard term and tenure mortgages as closed end credit. If the Board does not adopt this treatment, HUD will prescribe disclosure requirements similar to those appearing at 24 CFR 203.49(f). HUD may also adopt the Federal Reserve Board requirements for line of credit mortgages if the Board issues revised requirements for open end credit.

7. Mortgage Insurance Contract

Section 255(g) of the Act places a cap on the amount of the benefits of insurance. Under the statute, a claim for the insurance benefits may not exceed the maximum dollar amount established under section 203(b)(2) of the Act for a one-family residence. However, the statute is nearly silent as to the manner in which insurance claims are to be paid. Some properties securing mortgages insured under this demonstration may have an appraised value at the time of loan origination of less than the section 203(b)(2) amount. In such cases, HUD does not propose to pay a claim in excess of the appraised

value of the property at the time of loan origination. The proposed rule provides that the Department will pay a claim in an amount up to the lesser of the appraised value of the property or the maximum FHA claim amount at the time the mortgage loan was originated. See § 206.129(b).

HUD proposes a claims procedure whereby the mortgagee may file a claim under five different sets of circumstances, see § 206.123(a). When the mortgagor decides to sell the property or no longer occupies the property as a principal residence, the property is sold for the fair market value and the mortgagee indebtedness is paid from the proceeds of the sale, with any remainder being distributed to the mortgagor or his or her estate. If the fair market value of the property exceeds the indebtedness, the mortgagee would not file a claim and would notify HUD to cancel the mortgage insurance. See § 206.133. The mortgagor of the estate may be able to sell the property only for an amount which will not pay the outstanding indebtedness in full. In such cases, HUD proposes to permit the mortgagee to release the mortgage of record in order to facilitate the sale if an appraisal confirms that a higher sales price is not feasible. The insured mortgage could only be released where there are no junior liens outstanding on the property. The mortgagee will receive the proceeds from the sale, and will file a claim for the difference between the indebtedness and the sale proceeds, up to the maximum claim amount. See § 206.125(c).

If the mortgage becomes due and payable and is not paid, the mortgagee may initiate a foreclosure action. The mortgagee may delay foreclosure up to three months, or longer with HUD consent, without affecting its rights under the insurance contract.

Once the mortgagor receives notice that the mortgage is due and payable, the property is appraised to determine its value. The appraisal is necessary in order to determine the minimum amount the mortgagor or the estate can sell the property for, or the amount the mortgagee must bid at the foreclosure sale, the mortgagor or the estate may give the mortgagee a deed-in-lieu of foreclosure in consideration for the cancellation of the mortgage debt.

If the mortgage is foreclosed and the mortgagee is the successful bidder, or if the mortgagee acquires title via a deed-in-lieu of foreclosure, the mortgagee does *not* convey title to HUD for the payment of the insurance benefits. Instead, the mortgagee sells the property (see § 206.125(g)) and files its claim for the differences, if any, between the indebtedness and the proceeds from the sale. See § 206.129(d). If a party other than the mortgagee acquires title, the mortgagee applies the proceeds from the foreclosure sale to the indebtedness and files a claim for the remainder. See § 206.129(d).

In cases where the mortgagee fails to make the required payments under the mortgage, which HUD expects will be rare, the mortagor would receive the payments from HUD (see § 206.121), and HUD would demand reimbursement from the mortgagee. If reimbursement is not made, the mortgagee could receive insurance benefits equal to the payments made to the mortgagor or on the mortgator's behalf in exchange for assignment of the mortgage. The interest which had accrued under the mortgage would not be inclined in the claim for the insurance benefits.

8. Miscellaneous Items

A. Limitation on "value"

Section 255(d)(3) of the Act requires an insured mortgage to be secured by a dwelling with a "value not to exceed the maximum dollar amount established by the Secretary under section 203(b)(2) for a one-family residence. Section 203(b)(2) limits are normally applied to the mortgage principal, not the value of the dwelling. Although HUD could implement this provision by excluding homes with values of over $67,500 ($101,250 in the highest cost areas), this result would not match program objectives, which are to aid elderly homeowners who are "house rich, but cash poor."

HUD proposes to limit the benefits available from an insured mortgage by using the lesser of the appraised value of the property or the maximum FHA claim amount in computing monthly payments for tenure mortgages and the principal limit for term and line of credit mortgages. This approach would permit a borrower with a house worth more than the maximum FHA claim amount to participate in this demonstration, but would limit available payment amounts. Without being denied the benefits of this program, the borrower would be encouraged to seek out a conventional home equity conversion mortgage with higher payment amounts.

Because this approach is not supported by the wording of section 255(d)(3) considered in isolation (although it leads to a result compatible with section 255 considered as a whole), HUD consulted informally with Congressional and interest group representatives involved in development of the legislation and received indications that section 255(d)(3) was not intended to require complete exclusion of all homes valued over the section 203(b)(2) limits. HUD therefore has supported a technical amendment to section 255(d)(3) which deletes the reference to "value." This proposed rule is written on the assumption that the technical amendment will become law before a final rule takes effect.

Ancillary Contracts

Section 255(i)(1)(A) of the Act requires payment from HUD to the mortgagor under "ancillary contracts" when the party responsible for payment has defaulted. Section 255(i)(1)(B) makes a general reference to recovery by HUD from "any source." HUD is uncertain what these "ancillary contracts" from "any source" might be for, or with whom the mortgagor might contract for payments. The statute does not contain a definition, and the legislative history is silent on this point. For this initial demonstration program, due to its small size, HUD has chosen not to implement the portion of section 255 pertaining to ancillary contracts.

C. Handbooks, Mortgagee Letters, Notices

HUD will expect mortgagees to follow administrative policies generally applicable to its single family mortgage insurance programs as set forth in handbooks, mortgagee letters and notices, except for policies clearly inapplicable to home equity conversion mortgages or as otherwise advised by HUD.

D. Title Insurance

This demonstration will differ from other HUD single family programs in that title evidence will be required to be submitted with the application for mortgage insurance (§ 206.45(a)). Title evidence in the form of title insurance must also show the insured mortgage and the Secretary's mortgage (§ 206.27(e)) to be first and second liens, respectively. Because the mortgage principal amount continues to increase, unlike a regular mortgage, it is imperative that there be certainty if the insured mortgage becomes due and payable that the insured mortgage is a first lien.

Because home equity conversion mortgages differ from other mortgages, the Department specifically requests comment on whether mortgagee's title insurance will cover home equity conversion mortgages under this demonstration, and if so, what the maximum amount of insurance, if any, will be.

9. Techical Explanation of the Payment Model

A. Overview

FHA insurance on any of the three types of home equity conversion mortgages under this demonstration (tenure, term, or line of credit) provides protection to the mortgagee from collateral loss. Collateral loss is the amount by which the outstanding loan balance on the mortgage, including principal, accrued interest, and mortgage insurance premimum, may exceed the net value of the collateral at the time the mortgage becomes due and payable. Unlike an traditional mortgage for which collateral risk is greatest in the early years due to a declining loan balance over time, the home equity conversion mortgage has negligible collateral risk at the outset when the loan balance is small. Instead the collateral risk of a home equity conversion mortgage is greatest in the out years because the loan balance continues to grow as long as the mortgagor occupies the property. Collateral risk is reduced somewhat by the expectation of property appreciation over the years. The full appreciated value of the property (less selling expenses) would be available to satisfy the debt when the loan becomes due and payable. However, appreciation will not eliminate the risk of loss, because (1) future appreciation rates are uncertain, and (2) appreciation can be less than the rate of accrual of the loan balance. Should the mortgagor occupy the property for many years beyond his or her normal life expectancy at loan origination, the possibility of collateral loss becomes quite high on that loan. But as the likelihood of a mortgagor remaining in occupancy declines steadily with advancing age, the exposure to the high collateral risk declines as well. The payment model for FHA-insured home equity conversion mortgages provides a technique for analyzing this risk exposure, taking into account uncertain future rates of property appreciation and declining loan survivorship probabilities.

The FHA home equity conversion mortgage payment model applies a fundamental relationship between the mortgage insurance premium (MIP) collected and the expectation of future collateral losses to determine the maximum monthly payment amount that can be insured under a tenure mortgage. The same fundamental relationship is used to determine the maximum principal limit that can be insured under term and line of credit mortgages. The fundamental relationship requires that at the maximum monthly payment or maximum principal limit, the present discounted value of the expected MIP be equal to the present discounted value of the expected collateral losses. The expected MIP in this case refers to the total MIP paid by the mortgagor. The expected losses refer to total losses and not to claims which are capped in accordance with the proposed rule. The discussion of coinsurance below will address the coinsurance premium and the losses in excess of the maximum FHA claim amount.

B. Expected MIP

The scheduled total MIP (HUD's portion plus any coinsurance retained by the mortgagee) under the demonstration is two points up front on the lesser of the appraised value of the property or the maximum FHA claim amount plus 50 basis points annually on the outstanding loan balance. The up front portion is paid at loan closing and is certain to be collected. The 50 basis point annual premium is paid in the future and will be collected as scheduled only if the mortgage has not yet been terminated. Let 1_{x+t} be the probability that a mortgage originated by a borrower with initial age x is still in force t years from origination. Then the expected premium in year t is given by

$$E[MIP_t] = 1_{x+t} * MIP_t,$$

where

MIP_t is the scheduled MIP in year t, and E[.] is the expected value operator.

Note that $1_x = 1$ because all loans are in force at origination, and $1_{100} = 0$ by assumption. (The latter assumes that all loans will be terminated by the time the borrower attains age 100.) The values 1_{x+t} are probabilities between 0 and 1. They resemble an actuarial life table for borrowers between the ages of x and 100. The probabilities are in fact smaller than actuarial survival probabilities to account for loan terminations due to move outs or refinancing rather than death of the mortgagor. The values actually used in the model are based upon the 1979–81 U.S. female mortality tables published by the Department of Health and Human Services, adjusted for move outs, and are interpolated to estimate monthly probabilities.

C. Expected Losses

The model estimates expected losses at each time t in the future as a function of the scheduled loan balance at time t and the conditional expected value of the collateral at time t, given that the value of the collateral is insufficient to pay off the debt. The scheduled balance is determined in a straight-forward manner. The conditional expected value of the collateral is computed based on the assumption that future house values can be modelled by a stochastic (geometric Brownian motion) process. Both will be described in more detail below.

The scheduled outstanding balance, B(t), begins at t=0 with an initial balance equal to the sum of the financed closing costs, up front MIP, and a third component which varies by type of mortgage. In the case of a tenure mortgage, the third component is equal to the initial payment (excluding financed closing costs), as defined in the proposed rule, plus the first monthly payment to the mortgagor. For term and line of credit mortgages, the third component is the maximum principal limit at origination. (Note that level monthly payments for term mortgages are calculated by a sinking fund formula to give the maximum principal limit at the end of the term. Term mortgages are, in effect, line of credit mortgages with equal monthly draws over the scheduled term.)

Subsequent values of B(t) in the model are calculated as the balance from the previous period, B(t−1), plus interest accrued at the expected average mortgage interest rate (as defined in the proposed rule), plus the monthly payment for month t, plus the scheduled MIP based on the 50 basis point annual rate applied to B(t−1). In the case of term and line of credit mortgages, the monthly payment is zero. This calculation is repeated until the outstanding principal balance has been calculated for all future values of t.

The following discussion of the estimation of future house value presents the model both intuitively and rigorously for readers of varied mathematical backgrounds. The basic property of a geometric Brownian motion process that is particularly well suited to modelling future house values is the treatment of the rate of appreciation as a random variable with certain characteristics. Starting from a point value equal to the appraised value at t=0, the rate of appreciation of the house over each small time interval (t−1,t) is treated as an independent, normally distributed random variable with constant mean m and variance σ^2. In the model, a mean of 0.04 (4 percent) and variance of 0.01 is assumed. These are expressed as annual rates, although the stochastic process has the same properties regardless of the size of the time intervals, provided the intervals are small relative to the average life of the loan, and the mean and variance are expressed in comparable time units. The process treats future appreciation rates as uncertain; yet, their assumed normal

distribution allows probabilities to be assigned to all possible values. This facilitates analysis of the likelihood of different possible outcomes.

Although the mean and variance of the process are constant over each small time interval (t−1,t), the cumulative appreciation rate over the interval (0,t) has a multivariate normal distribution with growing mean and variance of mt and $\sigma^2 t$, respectively. The distribution of the house values themselves over this same interval will be log-normal. The mean, or expected value, of the log-normal house price distribution at time t is given by:

$$E[H(t)] = H(0) * \exp(mt + 0.5\,\sigma^2 t),$$

where

H(t) = house value at time t, and
exp(.) = the exponential function.

The expected value of the house given in equation (2) is the unconditional expected value. It represents the mean of the entire log-normal house price distribution at time t. The conditional expected value of the house, given that the value is less than the loan balance B(t), is similar in concept except that it represents the mean of only the left tail of the price distribution. It is the mean of the log-normal price distribution truncated at the value B(t). Thus the conditional expected value is always less than or equal to the unconditional expected value.

If a mortgage is terminated at time t, and if the value of the house is greater than B(t), there is no loss. If, on the other hand, the mortgage is terminated at time t, and the house value is less than B(t), there is a loss. The expected amount of the loss is the product of 1) the probability that the mortgage will terminate at time t, 2) the probability that the house value at time t is less than B(t), and 3) the difference between the outstanding balance, B(t), and the conditional expected value. A methodology for calculating each is presented below.

The calculation of the probability of termination of the mortgage at time t is analogous to the calculation of the probability of death from an actuarial life table. Let d_t denote the probability of termination at time t. Recall the definition of the loan survival probabilities 1_{x+t} from above. Then by definition

$$d_t = 1_{x+t} - 1_{x+t+1}.$$

The probability that the house price at time t will be less than a given value, B(t), can be determined as follows. Using the log-normality of the value distribution, one first computes the natural logarithm of B(t)/H(0). Call this number B*(t). Then one computes the area under the normal probability density function to the left of the value B*(t), using a mean and variance of mt and $\sigma^2 t$, respectively. This area represents the desired probability and is denoted z(t). It is calculated by numerical approximation of the following improper integral:

$$z(t) = G(t) * \int_{-\infty}^{B^*(t)} \exp[-0.5 * \{(y - mt)/\sigma\sqrt{t}\}^2]\, dy, \quad (4)$$

where

$$G(t) = 1 / [\sqrt{2\pi} * \sigma\sqrt{t}].$$

The conditional expected value at time t, given that the value is less than B(t), is the product of a factor F(t) and the unconditional expected value from expression (2). The factor F(t) is sensitive to the loan balance B(t), and it can take on values ranging from 0 to 1, depending on whether B(t) is very small or very large, respectively. To calculate F(t), one must evaluate a second improper integral:

$$F(t) = G(t) * \int_{-\infty}^{A(t)} \exp[-0.5 * (y - \sigma\sqrt{t})^2]\, dy, \quad (5)$$

where

$$G(t) = 1 / [\sqrt{2\pi} * z(t)],$$

$$A(t) = [B^*(t) - mt] / \sigma\sqrt{t},$$

$$z(t) = \text{prob}[H(t) < B(t)], \text{ and}$$

$$B^*(t) = \ln[B(t)/H(0)].$$

The desired expression for the conditional expected value is

$$E[H(t) \mid H(t) < B(t)] = F(t) * E[H(t)], \quad (6)$$

where

E[H(t)] is defined in expression (2).

The expected loss at time t can now be expressed succinctly, using the notation developed above.

$$E[L_t] = d_t * z(t) * (B(t) - E[H(t) \mid H(t) < B(t)]). \quad (7)$$

D. Calculation of Payment Amount and Maximum Principal Limit

The fundamental relationship of the model requires the present discounted values of the expected MIP and of the expected losses to be equal at the time of origination. If the present value of the expected losses is less than the present value of the expected MIP, then a higher monthly payment for tenure mortgages or a higher maximum principal limit for term and line of credit mortgages can be supported by the given premium structure. If the present value of the expected losses is greater than the present value of the expected MIP, then a lower monthly payment or principal limit is indicated. The FHA mortgage payment model solves for the unique monthly payment amount or maximum principal limit that satisfies the fundamental relationship. The discount rate used for the calculation is the expected average mortgage interest rate as defined in the proposed rule less 100 basis points.

E. Coinsurance

Under the coinsurance option, it is possible for the loss on an FHA insured mortgage to exceed the lesser of the house value at origination or the maximum FHA claim amount. (Under the assignment option, this could happen only if the mortgagee chose not to assign the mortgage in accordance with the proposed rules governing assignment). Such losses in excess of the initial house value or the maximum FHA claim amount will be absorbed, or coinsured, by the mortgagee. In return, the mortgagee retains a portion of the total MIP collected as a coinsurance premium. The FHA mortgage payment model provides a method for estimating the coinsurance premium which is described below.

The total MIP paid by the mortgagor under either the coinsurance option or the assignment option is two points up front on the lesser of the appraised value of the property or the maximum FHA claim amount plus 50 basis points annually on the outstanding loan balance. The coinsurance premium retained by the mortgagee under the coinsurance option consists of a portion of the 50 basis point annual premium. The mortgagee does not retain a portion of the up front premium.

The model easily estimates the amount of coinsurance premium, expressed as a basis point annual rate applied to the outstanding loan balance. It requires only a small modification of the fundamental relationship used to determine the payments and maximum principal limits. Specifically, the present discounted value of the expected coinsurance premium must equal the present discounted value of the expected losses in excess of the maximum claim. Since the coinsurance premium is part of the total MIP, the retention of a coinsurance premium by the mortgagee does not affect the scheduled outstanding balance, B(t). Therefore, the expected coinsurance MIP at time t is calculated using equation (1), except that the scheduled total MIP at time t is replaced by the scheduled coinsurance MIP at time t. The scheduled coinsurance loss at time t is calculated using equation (7), except that the loan balance B(t) is replaced by the uninsured balance UB(t) defined as follows:

$$UB(t) = \max[0, B(t) - FHAMAX],$$

where

FHAMAX = the lesser of the initial appraised value or the maximum FHA claim amount.

If the present value of the expected coinsurance losses is greater than the present value of the expected coinsurance MIP, then a higher coinsurance premium is indicated. If the expected losses are less than the expected premium, then a lower coinsurance premium is indicated. The FHA model solves for the unique coinsurance premium rate which equates the two. The discount rate used is the expected average mortgage interest rate as defined in the proposed rule less 100 basis points.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a demonstration program for the insurance of no more than 2,500 mortgages over a short period of time. Participation in the demonstration is voluntary by both mortgagees and mortgagors.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 [53 FR 13854] under Executive Order 12291 and Regulatory Flexibility Act.

The Home Equity Conversion Mortgage Insurance Demonstration is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 206.11, 206.15, 206.19, 206.21, 206.27, 206.41, 206.43, 206.45, 206.49, 206.123, 206.125, 206.127, 206.131, 206.133 and 206.203 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application for reservation of insurance authority	206.11	50	1	50	.5	25
Request for extension of a reservation	206.11(d)	25	1	25	.5	12.5
Purchase commitment by loan correspondent's sponsor	206.11(e)	5	1	5	1	5
Application for insurance (2502-0059, 2502-0111)	206.15	50	25	1,250	1	1,250
Certification of receipt of counseling	206.15(c), 206.41(c)	50	25	1,250	.05	62.5
Disclosure of shared appreciation mortgage terms and options	206.19(c)(4)	50	15	750	.5	375
Disclosure of new adjustable interest rate	206.21(e)	50	15	750	.1	75
Notification to Secretary of potential default conditions	206.27(c)(2)	50	1	50	.5	25
Report to mortgagor on line of credit balance	206.27(d)	50	10	500	.1	50
List of HUD-certified counseling organizations in mortgagor's area	206.41(a)	50	50	2,500	.05	125
Disclosure of mortgage terms and conditions	206.43(a)	50	25	1,250	.2	250
Written explanation of procedures in event of mortgagee default	206.43(b)	50	25	1,250	.05	125
Provision of title evidence to the Secretary	206.45(a), 206.49(d)	50	25	1,250	.1	125
Certificate that no child under 7 lives in home with hazardous paint surfaces	206.45(d)	50	.1	5	.2	2.5
Claim of mortgage insurance benefits (2502-0093)	206.123(a), 206.127	50	.1	5	1	5
Notice to Secretary that a mortgage is due and payable	206.125(a)(1)	50	1	50	.1	5
Notice to Secretary to initiate an appraisal pursuant to a claim	206.125(b)	50	.1	5	.2	2.5
Notice to Secretary of foreclosure proceedings (2502-0347)	206.125(d)(3)	50	.01	.5	1	.5
Certification of condition of condominium upon assignment of mortgage	206.131(c)	50	.01	.5	1	.5
Notice pursuant to termination of insurance	206.133(d)	50	1	50	.2	10
Annual statement to mortgagor of mortgage activity during the year	206.203	50	25	1,250	.3	375
Adjustable rate line of credit disclosures	206.23(c)	50	10	500	.1	50
Mortgage provisions	206.27(b)	50	25	1,250	.05	62.5
Information to be provided by counselors to mortgagors	206.41(b)	100	50	5,000	1.5	7,500
Inspection of repairs by mortgagee	206.47(c)	50	1	50	.3	15
Amount of mortgage insurance premium	206.105	50	25	1,250	.01	12.5
Notification of mortgagor that mortgage is due and payable	206.125(a)(2)	50	.001	.05	.5	.025
Request to sell property at lower price	206.125(g)	50	.001	.05	.5	.025
Application for insurance benefits by mortgagee	206.123, 206.127	50	.001	.05	.5	.025
Notice of prepayment of line of credit mortgage	206.209(c)	10	1	10	.3	3
Total annual burden						10,549

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 206

Aged, Home equity conversion mortgages, Mortgage insurance.

Accordingly, 24 CFR Part 200 would be amended and a new 24 CFR Part 206 would be added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is proposed to be added to § 200.810 to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion mortgage insurance) unless the mortgagor provides the certification described in § 206.45(d) of this chapter. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this chapter.

3. A new Part 206 is proposed to be added to Chapter II of 24 CFR to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE DEMONSTRATION

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206.3 Definitions.
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206.123 Claim procedures in general.
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206.133 Termination of insurance contract.

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206.201 Mortgage servicing generally, sanctions.
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206.205 Election to use an escrow account.
206.207 Allowable charges and fees after endorsement.
206.209 Prepayment.

Authority: Secs. 211 and 255 of the National Housing Act (12 U.S.C. 1715b, 1715z–20); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 206.1 Purpose.

Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) added a new section 255 to the National Housing Act (12 U.S.C. 1715z–20). Section 255 authorizes the Secretary to carry out a demonstration program for the insurance of home equity conversion mortgages for elderly homeowners. This demonstration program of mortgage insurance is designed:

(a) To meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

(b) To encourage and increase involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners; and

(c) To evaluate data to determine the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages, the types of home equity conversion mortgages that best serve the interests of elderly homeowner mortgagors, mortgagees and the Federal Government, and the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for the elderly.

§ 206.3 Definitions.

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

"Assessment" means a special assessment by a public body or an assessment by a cooperative housing corporation or a condominium or homeowner association.

"Contract of insurance" means the agreement evidenced by the issuance of a mortgage insurance certificate, incorporating by reference Subpart C and the applicable provisions of the National Housing Act.

"Expected average mortgage interest rate" means the mortgage interest rate used to calculate monthly payments for tenure and term mortgages and maximum draws for line of credit mortgages. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the expected average mortgage interest rate for the subsequent 15 years. The mortgagee's current 15-year fixed mortgage interest rate shall be used for this purpose or another comparable rate approved by the Secretary.

"Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

"Maximum FHA claim amount" means the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act).

"MIP" means the mortgage insurance premium paid by the mortgagee to the Secretary in consideration of the contract of insurance.

"Mortgage" means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a cooperative housing development, the term "mortgage" means a first lien given to secure a loan for financing the purchase of a corporate certificate and the applicable occupancy certificate of a cooperative ownership housing corporation. If the dwelling unit is in a condominium, the term "mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit is a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed," or another term used in a particular jurisdiction. The term "mortgage" also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor and mortgagee.

"Mortgagee" means the original lender under a mortgage and any assign permitted by § 206.101.

"Mortgagor" means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

"Principal limit" means the maximum mortgage principal balance, including accured interest and MIP, that may be reached under a term mortgage or line of credit mortgage before payments to the mortgagor cease. It is calculated for each month that a mortgage could be outstanding using factors or a computer model provided by the Secretary. It is the maximum disbursement that could be received in any month under a line of credit mortgage, assuming that no other disbursements are received, taking into account the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. It is capped at the lesser of the initial appraised value of the property or the maximum FHA claim amount. It is used to calculate the fixed term and monthly payments for a term mortgage and maximum draws under a line of credit mortgage.

"Principal residence" means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

"Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

§ 206.5 Waivers.

The Secretary, in an individual case, may waive any requirement of Subpart B (except § 206.11(e)) not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of this demonstration program. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Policy Development and Research or the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be delegated further.

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to Subparts B and C shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured, and shall not adversely affect the interests of a mortgagee on any mortgage to be insured on which the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where HUD provides assistance to the mortgagor.

§ 206.9 Limit on extent of program.

(a) *Number of mortgages.* No more than 2500 mortgages may be insured under this part.

(b) *Date.* No mortgage may be insured under this part after September 30, 1991, except pursuant to a firm commitment issued on or before that date.

Subpart B —Eligibility Applications

§ 206.11 Application for reservation of insurance authority.

(a) *Definition.* A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the requirements of this subpart.

(b) *Application.* Any mortgagee approved under Part 203 of this chapter, except an investing mortgagee approved under § 203.6 of this chapter, may apply for reservations of insurance authority for not less than 10 but not more than 50 mortgages. A mortgagee approved under §§ 203.3, 203.4, 203.6 or 203.7 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval. A mortgagee may apply for additional reservations after its initial reservations are used or expire if reservations of insurance authority are available.

(c) *Approval.* If the application for the reservation is acceptable, the Secretary will then approve the request for the reservation if reservations of insurance authority are available. A mortgagee may not originate a mortgage under this part without first obtaining a reservation of insurance authority for the mortgage.

(d) *Expiration and extension.* A reservation of insurance authority will expire six months after the date of issue. The reservation shall be extended for an additional three month period for each mortgage for which the mortgagee has an application pending, pursuant to a written request for an extension by the mortgagee to the Secretary.

(e) *Requirements for approval—loan correspondents.* At the time of application for the reservation of insurance authority, a loan correspondent (as defined in § 203.5 of this chapter) shall provide evidence satisfactory to the Secretary that the mortgage to be insured under this part will be purchased by the loan correspondent's sponsor or sponsors which have been approved under this part. Such evidence shall include: (i) The name of each sponsor mortgagee approved under this part which will purchase the mortgages originated under this part, and (ii) a copy of each purchase agreement which obligates the sponsor mortgagee to purchase the mortgages originated under this part. The collective agreements must show that all the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent under paragraph (c) of this section is used.

§ 206.13 Ineligible programs.

Mortgages originated through the Direct Endorsement or Coinsurance programs are not eligible for insurance under this part.

§ 206.15 Application for insurance.

(a) *Submission.* A mortgagee with a reservation of insurance authority may submit an application for insurance of a mortgage which is about to be executed.

(b) *Form.* The application must be made upon a form prescribed by the Secretary.

(c) *Insurance of mortgage.* The Secretary approves an application for mortgage insurance by issuing a commitment. The Secretary shall establish in the commitment the terms and conditions upon which the mortgage will be insured. The mortgagee, upon closing the mortgage, submits to the Secretary the commitment, the certificate received by each mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, satisfactory title evidence as required under § 206.45(a), the mortgagee's election of either the assignment or coinsurance option under § 206.107, and any other documentation required by the Secretary. If the mortgagee has complied with the terms and conditions of the commitment, the Secretary will issue a Mortgage Insurance Certificate. Mortgages insured under this part shall be obligations of the General Insurance Fund.

Eligible Mortgages

§ 206.17 Eligible mortgages.

(a) *Kinds of mortgages.* The kinds of mortgages eligible for insurance under this part are: Fixed rate tenure mortgages (§ 206.19(a)), fixed rate term mortgages (§ 206.19(b)), adjustable rate tenure mortgages (§ 206.21(a)), adjustable rate term mortgages (§ 206.21(b)), fixed rate line of credit mortgages (§ 206.23(a)), and adjustable rate line of credit mortgages (§ 206.23(a)). Mortgagees may originate one or more of these kinds of mortgages. A fixed rate tenure mortgage may also provide for shared appreciation (§ 206.19(c)), provided that the mortgagee also must offer fixed both rate tenure mortgages and adjustable rate tenure mortgages without shared appreciation.

(b) *Payments.* All payments to a mortgagor under all kinds of mortgages shall be made jointly to all mortgagors occupying the mortgaged property as their principal place of residence, except as otherwise provided by joint instruction of all mortgagors occupying the mortgaged property as their principal place of residence.

§ 206.19 Fixed rate mortgages.

(a) *Tenure mortgages.* A fixed rate tenure mortgage provides for equal monthly payments by the mortgagee to the mortgagor as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a fixed rate agreed upon by the mortgagor and the mortgagee. The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance

periodically as provided in the mortgage.

(b) *Term mortgages.* A fixed rate term mortgage provides for equal monthy payments by the mortgagee to the mortgagor for a fixed term of years unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Although the payments to the mortgagor ceases at the end of the fixed term, repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a fixed rate agreed upon by the mortgagee and the mortgagor, and continues to accrue after the monthly payments stop. The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(c) *Shared appreciation.* (1) A fixed rate tenure mortgage may also provide for sharing between the mortgagor and the mortgagee of the appreciation in the value of the property. At the time the mortgage comes due and payable or is prepaid in full, the mortgagor will pay an additional amount of interest equal to a percentage of the net appreciated value of the property during the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(2) The mortgagee's share of net appreciated value is computed as follows: (i) If the mortgage principal balance at the time of sale is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (i.e., sales proceeds less sales costs and capital improvement costs incurred by the mortgagor, but excluding any liens) and multiplying by the appreciation margin.

(ii) If the mortgage principal balance is greater than the appraised value at origination but less than the adjusted sales proceeds, the mortgagee's share is calculated by subtracting the mortgage principal balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(iii) If the mortgage principal balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(3) To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the principal balance at the beginning of the twelve month period prior to sale plus the monthly payments to the mortgagor in the twelve months prior to the sale, shall not exceed an effective interest rate of twenty percent.

(4) In addition to any other disclosures required by this part, the mortgagee shall provide a disclosure to the mortgagor showing the maximum payment that would be owed due to shared appreciation which could result when the mortage becomes due and payable or the mortgage is prepaid in full. The mortgagee shall also disclose to the mortgagor the monthly payments and the interest rates which are applicable to fixed rate tenure mortgages, adjustable rate tenure mortgages, and shared appreciation tenure mortgages. The disclosure shall be made at the time of the initial loan application.

§ 206.21 Adjustable rate mortgages.

(a) *Tenure mortgages.* An adjustable rate tenure mortgage provides for equal monthly payments by the mortgagee to the mortgagor as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a rate initially agreed upon by the mortgagee and mortgagor, and adjusted as described in paragraph (d). The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(b) *Term mortgages.* An adjustable rate term mortgage provides for equal monthly payments from the mortgagee to the mortgagor for a fixed term of years unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Although the payments to the mortgagor cease at the end of the fixed term, repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is preparid in full or becomes due and payable under § 206.27(c). Interest accrues at an interest rate initially agreed upon by the mortgagee and the mortgagor, and adjusted as described in paragraph (d). The interest and MIP charged on the outstanding principal of the mortgage may be added to the outstanding principal balance periodically as provided in the mortgage.

(c) *Shared appreciation.* Adjustable rate mortgages may not provide for shared appreciation.

(d) *Changes in interest rate.* The interest rate shall be adjusted as provided in § 203.49 (a), (c), and (e) of this chapter, except that the reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "mortgagee's first payment after the initial payment described in § 206.25(a)."

(e) *Disclosures.* (1) The mortgagee must provide a disclosure to the mortgagor at least 25 days before any adjustment to the interest rate. The disclosure must include the new mortgage interest rate and the current index interest rate value. (2) Compliance with the disclosure requirements of the Board of Governors of the Federal Reserve Board System in 12 CFR Part 226 shall be required and shall constitute compliance with this paragraph.

§ 206.23 Line of credit mortgages.

(a) *General.* A line of credit mortgage provides a line of credit to a mortgagor who may receive payments as long as the cumulative payments (less any partial prepayment of principal), plus the accrued interest and MIP are less than the principal limit. Repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Interest accrues at a fixed or adjustable rate as agreed upon by the mortgagor and the mortgagee. Interest and the MIP charged on the outstanding principal of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(b) *Changes in interest rate.* For adjustable rate line of credit mortgages, the interest rate for subsequent draws on the line of credit shall be adjusted as provided in § 203.49 (a), (c) and (e) of this chapter, except that the reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "mortgagee's initial payment described in § 206.25(a)."

(c) *Disclosures.* For adjustable rate line of credit mortgages (1) The mortgagee must provide pre-loan disclosures as provided in § 203.49(f) (1), (2) and (3) of this chapter. (2) The mortgagee must provide a disclosure to the morgagor at least 25 days before any adjustment to the interest rate. The

disclosure must include the new mortgage interest rate and the current index interest rate value. (3) The Secretary may accept compliance with the applicable disclosure requirements of the Board of Governors of the Federal Reserve Board System in 12 CFR 226 as a substitute for compliance with all or part of this requirement.

(d) *Shared appreciation.* Line of credit mortgages may not provide for shared appreciation.

§ 206.25 Initial payment.

(a) *Initial payment.* A mortgage described in §§ 206.19 or 206.21 may provide for an initial payment in addition to the equal monthly payments. The initial payment shall not exceed an amount equal to the sum of fees and charges allowed under § 206.31; estimated costs of repairs needed to conform the dwelling to standards prescribed by the Secretary; and an additional amount agreed to by the mortgagor and mortgagee. The initial payment may be used to discharge any existing liens, or to make repairs, not to exceed ten percent of the lesser of the appraised value of the property or the maximum FHA claim amount.

(b) *Refinancing.* If reservations of authority are available, the mortgagor may refinance an existing mortgage insured under this part. Notwithstanding the provisions of paragraph (a) which limit the initial payment, the initial payment under the refinancing mortgage shall not exceed the amount necessary to pay the existing mortgage in full and fees and charges allowed under § 206.31.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requriements of the Secretary.

(b) *Provisions.* The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions on the following matters:

(1) Payments by the mortgagee shall be due on the first of each month, except for line of credit mortgages. A line of credit mortgage payment shall be due within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an amount acceptable to the Secretary.

(3) The mortgagor shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to the insured mortgage and the second mortgage held by the Secretary. (See § 206.27(e)).

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The mortgagor must keep the property in good repair, and cause any repairs required under § 206.47 to be completed upon a schedule acceptable to the Secretary.

(6) The mortgagor must pay assessments in a timely manner.

(7) If the mortgagor elects to have the mortgagee escrow funds for taxes, hazard insurance, ground rents, and assessments, the mortgage shall contain provisions governing escrow requirements. If the mortgagor does not elect to have the mortgagee escrow such funds, the mortgagor shall agree to pay these bills in a timely manner. The mortgagee shall reserve the right to cure the mortgagor's failure to pay such bills in a timely manner.

(8) The mortgagor shall be charged for the payment of MIP.

(9) The mortgagee shall pay a late charge to the mortgagor for any late payment. The charge shall be in an amount equal to 10 percent of the entire payment, including any portion paid into an escrow account.

(10) The mortgagor shall not be liable for any debt remaining after the sale of the mortgaged property or the payment of the insurance benefits. The mortgagee shall not be permitted to obtain a deficiency judgment against the mortgagor if the property is foreclosed.

(11) If the mortgage is assigned to the Secretary, the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the outstanding indebtedness, including accrued interest, owed by the mortgagor at the time of the assignment.

(12) If the mortgage includes shared appreciation, the mortgage shall provide for a cap on the net appreciated value and the effective interest rate that can be earned in the year in which the property is sold.

(13) The mortgagor or his/her personal representative agrees to allow appraisers onto the property in order to determine its fair market value for the purposes established under Subpart C.

(14) The mortgagor may convert a term mortgage to a line of credit mortgage.

(15) The cost of an appraisal under § 206.125(b) may be added to the principal balance of the mortgage.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall be due and payable if (i) a mortgagor occupying the property as a principal residence dies and no surviving mortgagor occupies the property as a principal residence, or (ii) a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property in fee simple or on a leasehold interest as set forth in § 206.45(a).

(2) The mortgagee shall inform the Secretary of the occurrence of any of the following, and the mortgage shall be due and payable upon approval of the Secretary: (i) A mortgagor ceases to occupy the property as a principal residence for reasons other than death, or illness or other physical infirmity, and no other mortgagor occupies the property as a principal residence; (ii) a mortgagor fails to occupy the property for more than 12 months because of illness or other physical infirmity and no other mortgagor occupies the property as a principal residence; (iii) the property is in disrepair; or (iv) an obligation of the mortgagor under the mortgage is not performed.

(d) *Line of credit mortgages.* In addition to other provisions set forth in this section, a line of credit mortgage shall require the mortgagee to inform the mortgagor of the following when a payment is made:

(1) The cumulative principal balance, including accrued interest and mortgage insurance premiums;

(2) The principal limit for the current month; and

(3) The remaining amount available for payment (i.e., the difference between (1) and (2).

(e) *Second mortgage to Secretary.* A second mortgage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before the first mortgage is endorsed for insurance. The second mortgage shall be junior only to the insured mortgage and in a form meeting the requirements of the Secretary and shall be similar to the insured mortgage. The mortgagee shall pay all expenses of preparing and recording the second mortgage.

§ 206.29 Payments to the mortgagor.

(a) *Calculation of payments.*—(1) *Fixed rate and adjustable rate tenure mortgages.* Using the factors or computer model provided by the Secretary, the maximum monthly payment to a mortgagor shall be calculated based on the age of the youngest mortgagor, the expected average mortgage interest rate, any initial payment under § 206.25, and the lesser of the appraised value of the property or the maximum FHA claim amount.

(2) *Fixed rate and adjustable rate term mortgages.* Using the factors or computer model provided by the Secretary, the monthly payment to the mortgagor shall be calculated so that the sum of the following shall equal no more

than the principal limit at the end of the fixed term of the mortgage:

(i) An initial payment under § 206.25,

(ii) All monthly payments due through the term of the mortgage,

(iii) All MIP due through the term of the mortgage, and

(iv) All interest on (i), (ii), and (iii) paid or accrued through the fixed term of the mortgage. The expected average mortgage interest rate shall be used for determining the principal limit.

(3) *Fixed rate and adjustable rate line of credit mortgages.* Under a line of credit mortgage, a mortgagor may obtain payments at times and in amounts determined by the mortgagor whenever the payments plus accrued interest and MIP (less any partial prepayment of principal) is less than the principal limit for the month in which the payment is drawn. No additional payments may be obtained once the principal limit is reached.

(b) *Cessation of payments.* Monthly payments under a tenure mortgage described in §§ 206.19(a) or 206.21(a) may be stopped and restarted at the mortgagor's request. The mortgagee may charge a fee of no more than $15 for each request.

(c) *Conversion.* (1) A mortgagor receiving monthly payments under a fixed rate or adjustable rate term mortgage may convert the mortgage to a line of credit mortgage. A fixed rate term mortgage may only be converted to a fixed rate line of credit mortgage. An adjustable rate term mortgage may only be converted to an adjustable rate line of credit mortgage.

(2) Upon the request by the mortgagor to convert the mortgage, the mortgagee shall inform the mortgagor of the current principal balance and the principal limit for the month in which the conversion is made. Mortgagees must emphasize to mortgagors who previously elected under § 206.205 to have the mortgagee escrow funds for payments as set forth in § 206.27(b)(7) that the mortgagors shall be responsible for making such payments under line of credit mortgages. The mortgagee shall refund to the mortgagor all sums held in escrow accounts pursuant to the mortgagor's election under § 206.205.

(d) *Mortgage amount continues to increase.* Notwithstanding the principal limit, the mortgage shall be due and payable only as provided in § 206.27(c). The amount owed under the mortgage, including accrued interest and MIP, shall continue to increase until the mortgage is either prepaid in full or becomes due and payable as provided in § 206.27(c).

(e) *No minimum mortgage principal.* A mortgagee shall not require, as a condition of providing a mortgage loan secured by a mortgage insured under this part, that the monthly payments under a term or tenure mortgage or draws under a line of credit mortgage of the mortgage exceed a minimum amount established by the mortgagee.

(f) *Start of payments.* For a tenure or term mortgage, the mortgagee shall start making the monthly payments to the mortgagor on the first day of the month after the execution of the mortgage.

§ 206.31 Allowable charges and fees.

The mortgagee may collect, either in cash at the tme of settlement or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(a) *Loan origination fee.* A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: *Provided,* that the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(b) *Other charges and fees.* Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(1) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(2) Credit report;

(3) Survey, if required by the mortgagee or the mortgagor;

(4) Title examination;

(5) Mortgagee's title insurance;

(6) Fees paid to an appraiser approved by the Secretary for the initial appraisal of the property; and

(7) Such other charges as may be authorized by the Secretary.

Eligible Mortgagors

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance under § 206.15.

§ 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage.

§ 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

§ 206.39 Principal residence.

The mortgagor must occupy the dwelling as his or her principal place of residence. If there are multiple mortgagors, each mortgagor must occupy the dwelling as his or her principal place of residence.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of counselors which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b). Each mortgagor must receive counseling.

(b) *Information to be provided.* Counselors shall discuss the following information with the mortgagor:

(1) Options other than a home equity conversion mortgage, includng a mortgage insured under this part, that are available to the mortgagor, including other housing, social service, health, and financial options;

(2) Other home equity conversion options that are or may become available to the mortgagor, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) The financial implications of entering into a home equity conversion mortgage, including a mortgage insured under this part;

(4) A disclosure that a home equity conversion mortgage, including a mortgage insured under this part, may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner, and

(5) Any other information the Secretary may require.

(c) *Certificate.* The counselor will provide each mortgagor with a certificate stating that the mortgagor has received counseling. Each mortgagor shall provide the mortgagee with a copy of the certificate.

§ 206.43 Disclosure.

(a) *Notice of rights and obligations.* At least ten days prior to the execution of the mortgage, the mortgagee shall provide each mortgagor with an unsigned copy of the mortgage. The mortgagee shall identify and explain to each mortgagor the principal provisions of the mortgage.

(b) *Written explanation of payment.* At the same time the mortgagor receives the information contained in paragraph (a), the mortgagee shall give to each mortgagor an unsigned, written explanation prepared by the Secretary of the procedures to be followed to

ensure that timely payments are made by the mortgagee. After the mortgage is executed and the mortgage insurance certificate is issued, the Secretary will provide a signed, written explanation of the procedures, pursuant to § 206.119.

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple, or on a leasehold having a remaining period of not less than 10 years beyond the date of the 100th birthday of the mortgagor or, if there are multiple mortgagors, the youngest mortgagor. The mortgagee shall submit to the Secretary with the application for insurance satisfactory title evidence showing the insured mortgage and the second mortgage to the Secretary (pursuant to § 206.27(e)) as valid first and second liens, respectively. The title evidence shall meet the requirements of § 203.385(b) of this chapter. The mortgagee shall pay for title evidence for the second mortgage.

(b) *Type of property.* The property shall include a dwelling designed principally as a one-family residence. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit or a unit in a cooperative housing development, designed for one-family occupancy, shall also be an eligible property.

(c) *Flood insurance and property location.* The provisions of § 203.16a of this chapter pertaining to flood insurance and § 203.40 of this chapter pertaining to the location of the property are also applicable to this Part 206.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) shall apply unless the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling.

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the property standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage. The mortgagee shall exercise supervision over the repairs made to the property.

(b) *Assurance that repairs are made.* The mortgage loan may be closed before the repair work is started if the mortgagor and mortgagee enter into a repair loan agreement approved by the Secretary which governs advances made by the mortgagee during the repairs to the property.

(c) *Role of mortgagee.* The mortgagee shall cause an inspection of the property to be made at periodic intervals by an inspector approved by the Secretary in order to ensure that the work is satisfactory, and prior to the release of funds to the contractor performing the repairs. The mortgagee shall hold back a portion of the contract price attributable to the work done at each interval, and the total of the hold backs will be released after the final inspection and approval of the release of the mortgagee. The mortgagee shall ensure that all mechanics' and materialman's liens are released of record. A fee as established in § 206.31(a) may be charged by the mortgagee as compensation for administration of the repair loan agreement.

§ 206.49 Eligibility of mortgages involving dwelling unit in a cooperative housing development.

A mortgage involving a dwelling unit in a cooperative housing development which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance.

(a) *Definitions.* As used in connection with the insurance of mortgages under this part:

(1) "Corporation" means an organization which holds title to a cooperative housing development.

(2) "Corporate certificate" means such stock certificates, membership certificates, or other instruments which the laws of the jurisdictions in which the cooperative housing development is located require to evidence ownership of a specified interest in the corporation.

(3) "Occupancy certificate" means a written instrument provided by the corporation to each holder of a corporation certificates which grants an exclusive right of possession of a specific dwelling unit in the cooperative housing development.

(4) References in this part to a dwelling, residence or property which is sold, acquired or conveyed by any means (including foreclosure or deed in lieu of foreclosure) which is covered by a mortgage or subject to a lien shall be construed to include the corporate certificate together with the occupancy agreement, unless it is clear that a reference to the dwelling unit means the dwelling unit referenced in the occupancy certificate.

(b) *Eligibility of cooperative housing development mortgages.* The provisions of § 203.43c (c), (d), (e), and (1) of this chapter shall be applicable to mortgages that meet the requirements of this section, except that references to section 203(n) of the National Housing Act shall mean section 255 of the National Housing Act.

(c) *Adjustment for blanket mortgage.* In calculating the payments to the mortgagor under § 206.29, mortgagees must reduce the appraised value of the property by an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the commitment is issued.

(d) *Title evidence.* The mortgagee shall submit title evidence, as required under § 206.45(a), showing (1) that the mortgagor has good and marketable title to the corporate certificate and the exclusive right of possession of the dwelling unit, and (2) that the insured mortgage and the second mortgage to the Secretary (pursuant to § 206.27(e)) are valid first and second liens, respectively.

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary.

Subpart C—Contract Rights and Obligations Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

The provisions of §§ 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee either in cash or debentures at par plus accrued interest. The mortgagee shall pay the MIP to the Secretary until the contract of insurance is terminated.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Secretary an initial MIP of two percent of the lesser of the appraised value of the property or the maximum FHA claim amount.

(b) *Annual MIP.* After payment of the initial MIP, the mortgagee shall pay to the Secretary an annual MIP in an amount equal to one-half of one percent of the average outstanding mortgage

principal balance (including accrued interest and MIP) for the twelve-month period preceding each subsequent anniversary date of the closing of the mortgage.

§ 206.107 Mortgagee election of assignment or coinsurance option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the coinsurance option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary at the time that the principal balance, including accrued interest and MIP, equals the lesser of the initial appraised value of the property or the maximum FHA claim amount, if the mortgagee is current in making the required payments under the mortgage to the mortgagor, the mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Secretary, the mortgage is not due and payable under § 206.27(c)(1), and (i) the mortgagee has not informed the Secretary of an event described in § 206.27(c)(2), or (ii) the Secretary has been so informed but has denied approval for the mortgage to be due and payable. See § 206.123(a)(1). At the mortgagee's option, the mortgagee may forego assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a) (2)–(5).

(2) Under the coinsurance option, the mortgagee may not assign a mortgage to the Secretary unless the mortgagee fails to make payments (§ 206.123(a)(2)), but shall only be required to pay a reduced annual MIP to the Secretary. The mortgagee shall collect from the mortgagor the full amount of the annual MIP provided in § 206.105(b) but shall retain a portion of the annual MIP paid by the mortgagor as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by the mortgagee shall be determined by the Secretary as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a) (2)–(5).

(b) *No election.* Shared appreciation tenure mortgages shall be insured by the Secretary only under the coinsurance option.

§ 206.109 Amount of coinsurance premiums.

Using the factors or computer model provided by the Secretary, the amount of the coinsurance premium shall be determined for each mortgage based upon the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Secretary within fifteen days of closing and as a condition to the endorsement of the mortgagee for insurance.

(b) *Annual MIP.* For tenure and term mortgages, each annual MIP shall be due to the Secretary on the anniversary date of the closing of the mortgage. For line of credit mortgages, each annual MIP shall be due to the Secretary 30 days after the anniversary date of the closing of the mortgage.

§ 206.113 Late charge and interest.

(a) *Late charge.* Any MIP remitted to the Secretary after the payment date prescribed in § 206.111 shall include a late charge of four percent of the amount paid.

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any MIP remitted to the Secretary more than 20 days after the payment dates prescribed in § 206.111. Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

§ 206.115 Pro rata payment of periodic MIP.

(a) *Pro rata payment required.* If the insurance contract is terminated after the first year of the mortgage, the mortgagee shall pay a portion of the current annual MIP prorated from the due date of the last annual MIP to the date of termination.

(b) *Pro rata payment not required.* A pro rata payment of the MIP shall not be required if the insurance contract is terminated during the first year of the mortgage and before the first payment of the annual MIP is due.

HUD Responsibility to Mortgagors

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the insured mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary will hold a second mortgage to secure repayment by the mortgagor, see § 206.27(e)

§ 206.119 Written explanation of payment to mortgagor.

When the mortgage is insured, the Secretary shall provide the mortgagor with a written explanation of procedures to ensure that all of the funds described in § 206.117 will be received by the mortgagor, or paid to a third party on behalf of the mortgagor. The explanation shall specify (a) the HUD office to contact in case of a late payment, and (b) the procedures which the mortgagor must follow to make a request for payment by the Secretary.

§ 206.121 Secretary authorized to make payments, obtain lien.

(a) *Investigation.* The Secretary will investigate all requests for payment by a mortgagor. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand that within 30 days the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual. If the mortgagee complies with the demand by reimbursement, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand or such additional time as may be approved by the Secretary in writing, then the Secretary shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the mortgage.

If the mortgagee fails to comply with the demand within 30 days, or such additional time as the Secretary authorizes in writing, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage required by § 206.27(e). Payments shall be due and payable at the time and in the amounts which would have been applicable for payments under the insured first mortgage. The Secretary shall notify the mortgagor if payments are made under the second mortgage. Acceptance of such payments by the mortgagor shall relieve the holder of the first mortgage of any further

responsibility to make payments to the mortgagor. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage principal, and share appreciation, if any.

Claim Procedure

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in § 206.121(b);

(3) The mortgagor sells the property for less than the mortgage debt and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g), for an amount which does not satisfy the debt; or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the debt, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term "mortgagor" as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1) or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable. The mortgagee shall require the mortgagor to (i) pay the outstanding mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied toward the mortgage debt, with the surplus, if any going to the mortgagor; or (iii) provide the mortgagee with a deed in lieu of foreclosure.

The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. If an appraisal under § 206.125(b) has been performed or foreclosure initiated, the cost incurred by the mortgagee shall be added to the mortgage debt. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The property shall be appraised at the time the mortgagor is sent the notice that the mortgage is due and payable, or if the mortgagor requests an appraisal in connection with a pending sale. The mortgagee shall notify the Secretary to cause an appraisal of the property to be made. The Secretary shall inform the mortgagee and the mortgagor in writing of the appraised value of the property. The appraisal shall be at the mortgagee's expense.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for up to five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens of record (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within three months of giving notice to the mortgagor that the mortgage is due and payable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is situated do not permit the commencement of the foreclosure within three months from the date of the notice to the mortgagor that the notice is due and payable, the mortgagee shall commence foreclosure within three months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings of such initiation, and shall exercise reasonable diligence in prosecuting such proceedings to conclusion.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If the party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage debt.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by purchase at appraised value, foreclosure or deed in lieu of foreclosure, the mortgagee shall make diligent efforts to attempt to sell the property within six months from the date the mortgagee acquired the property. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary or the Administrator of the Veterans Administration if the sale of the property is financed with a mortgage insured by the Secretary or guaranteed, insured or taken by the Administrator.

(3) The provisions of §204.305(b) of this chapter shall be followed by the mortgagee to avoid conflicts of interest.

§206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Upon receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a), substituting the appraised value for the sales price. The mortgagee shall bear the cost of the appraisal.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the payment of the insurance benefits shall include the items listed in §203.351(a) of this chapter and the certification required under §203.353 of this chapter.

§206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* In no case may the claim paid under this subpart exceed the lesser of the appraised value of the property at the time the mortgage was originated or the maximum FHA claim amount. The interest allowance as provided in subparagraphs (d)(2)(iii), (e)(2) and (f)(2) of this section, shall not be included in determining the limit on the claim amount.

(c) *Shared appreciation mortgages.* The term "accrued interest" as used in this section does not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) The amount of the claim shall be computed by (i) totalling the amount of principal, (including any accrued interest and MIP which have been added to the principal) and any accrued interest which has not been added to the principal as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)) and the items set forth in paragraph (d)(3) of this section.

"Due date" means the date when the mortgagee notifies the Secretary under § 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under § 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items;

(i) Items listed in § 203.402 (a), (b), (c), (d), (e), (g) and (j) of this chapter, and § 204.322(*l*) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75.00, whichever is the greater. Costs of acquiring the property otherwise than by foreclosure may include an additional amount not to exceed $200 paid to the mortgagor for the execution of the deed in lieu of foreclosure.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, on the portion of the claim paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 206.

(iv) Costs of appraisal under §§ 206.125 and 206.127 if not otherwise included in the mortgage principal.

(3) There shall be deducted from the amount computed in (b)(1)(i):

(i) The items listed in § 203.403 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by (i) totalling the lesser of the initial appraised value of the property or the FHA maximum claim amount, and subtracting from the total (ii) the items set forth in §203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned on the portion of the claim paid in cash from the date the mortgage was assigned to the Secretary to the date the claim is paid, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 206.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Secretary, the mortgagee will not receive the entire claim payment as contained in subparagraphs (e) (1) and (2). The amount of the claim shall be computed by (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and (ii) subtracting from the total the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgagee, which may include expenses for staff time. If more than one mortgage is assigned to the Secretary,

the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage principal.

(f) *Amount of payment-mortgagor sells the property.* This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage debt, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the amount of principal (including any accrued interest and MIP which have been added to the principal) and any accrued interest which has not been added to the principal on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2) (i) and (iv) as applicable, and (ii) subtracting from the total the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, on the portion of the claim paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 206.

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term "property" as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Secretary, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the conditions of the property as of the date the assignment is filed for record. Section 234.275 of this chapter is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter shall be applicable to mortgages involved under this part which are assigned to the Secretary.

Termination of Insurance Contract

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the request by the Secretary for assignment or such additional time as the Secretary authorizes in writing, the contract of insurance shall automatically terminate.

(d) *Notice of termination.* The mortgagee shall give written notice to the Secretary within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) unless such notice is given.

(e) *Voluntary termination.* The mortgagor and the mortgagee may jointly request the Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the insurance contract. The provisions of § 203.295 of this chapter shall apply when a contract of insurance under this part is voluntarily terminated.

(f) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval for a mortgagee.

(b) *Importance of timely payments.* The paramount servicing responsibility is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including 24 CFR Part 24 (Debarment, Suspension and Limited Denial of Participation), and 24 CFR Part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* The provisions of § 203.502 of this chapter pertaining to the responsibility for servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

§ 206.203 Annual disclosure, providing information.

(a) *Annual disclosure.* The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage (including the MIP paid to the Secretary and charged to the mortgagor), the total amount of interest paid or accrued for the year, and the total outstanding mortgage balance. If the mortgagor has elected to have the mortgagee escrow funds pursuant to § 206.205(a), the mortgagee shall include an accounting of all payments into and from the escrow account and the remaining balance of the account for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) *Information.* The provisions of § 203.508 (a) and (b) of this chapter shall also be applicable to mortgages insured under this part. The mortgages, as part of the information required under § 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part.

§ 206.205 Election to use an escrow account.

(a) *Election—tenure and term mortgages.* A mortgagor may elect to require the mortgagee to pay taxes, ground rents, flood and hazard insurance premiums, and assessments from monthly payments under the mortgage. This option shall not be applicable to mortgagors with line of credit mortgages. If the mortgagor elects payment by the mortgagee, the mortgagee shall establish one or more escrow accounts for payment of such items, and the amounts escrowed shall be deducted from monthly payments. If the mortgagor does not elect payment by the mortgagee, the mortgagor shall pay such items in a timely manner.

(b) *Mortgagee's responsibilities.* The provisions of § 203.550 (a), (b), and (c) of this chapter pertaining to escrow accounts shall also be applicable to mortgages insured under this part.

(c) *Mortgagor's failure to make payments.* If the mortgagor fails to make timely payments of taxes, ground rents, flood and hazard insurance premiums or assessments, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish one or more escrow accounts for the mortgagor as if the mortgagor had made the election under this section.

(d) *Line of credit mortgages.* Mortgagors with line of credit mortgages shall pay taxes, ground rents, flood and hazard insurance premiums and assessments, in a timely manner. The mortgagee may make a payment for the mortgagor and charge the mortgagor's account if a payment is not made in a timely manner.

(e) *Escrow-assignment of mortgage to the Secretary.* If the mortgage is assigned to the Secretary under § 206.107(c)(1) or § 206.121(b), the Secretary may elect not to maintain an escrow account for the mortgagor and to require the mortgagor to pay taxes, ground rents, flood and hazard insurance premiums and assessments in a timely manner.

§ 206.207 Allowable charges and fees after endorsement.

The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage debt, but only for items listed in § 203.552(a) (6), (9), (11), and (13) of this chapter, or as authorized by the Secretary under § 203.552(a)(12) of this chapter. The mortgagee may charge a fee for starting and stopping tenure mortgage payments under § 206.29(b).

§ 206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay in full or in part a mortgage insured under this part without charge or penalty.

(b) *Tenure or term mortgage.* A tenure or a term mortgage may be prepaid at any time and the provisions of § 203.558 (a), (c), (d), and (e) of this chapter shall be followed in handling a prepayment of such a mortgage insured under this part, except that the term "installment due date" shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

(c) *Line of credit mortgage.* A line of credit mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two-week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

Dated: September 21, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-24600 Filed 10-24-88; 8:45 am]

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federal register

Tuesday
October 25, 1988

Part VIII

Department of Education

34 CFR Part 212

Even Start Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 212

Even Start Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes regulations to govern the Even Start Program, which was authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education Act of 1965. These regulations are intended to provide guidance to local educational agencies (LEAs) applying to the Secretary for funds under this program, and to establish procedures to govern implementation of the program if it changes from a direct grant program to a State-administered one, or *vice versa*.

DATES: Comments must be received on or before December 17, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, Mail Stop 6132), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Managment and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, Mail Stop 6150), Washington, DC 20202, Phone (202) 732-4682.

SUPPLEMENTARY INFORMATION:

A. Background

The Even Start program grants funds to eligible LEAs for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents. Unlike the basic Chapter 1 program, which provides educational services to eligible children with a separate provision for parental involvement, the Even Start program provides simultaneous educational services to children and parents. This approach recognizes that, in some instances parents lack the learning skills needed to assist in early learning for their children. In Even Start, these parents will be instructed in basic skills and in how to become partners in the education of their children.

Even Start was enacted by Pub. L. 100-297 as Part B of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and provides that (1) in a fiscal year in which the appropriation for the Even Start program is less than $50 million, the program will be operated as a direct grant program, with the U.S. Department of Education (Department) making grants to LEAs; and (2) if the program appropriation equals or exceeds $50 million, the Department will allocate funds on a formula basis to States, which will then make grants to LEAs. In both cases, grants will be made to LEAs on a competitive basis.

The application requirements and selection criteria proposed in these regulations will apply when the Secretary makes direct grants; these provisions will not apply to States when they make grants to LEAs. States may adopt these provisions or develop their own requirements and procedures, consistent with the statutory provisions, for making grants to LEAs.

These regulations are necessary in part because the selection criteria set forth in the Even Start statute are not compatible with those in the Department's general regulations governing direct grant programs that do not have specific regulations (see 34 CFR 75.210). In addition, the statute directs the Secretary to establish criteria to govern the continuation of grant awards in fiscal years in which responsibility for making grants to LEAs transfers from the Department to the State educational agencies (SEAs), or *vice versa*. Accordingly, these regulations also include procedures for the Department and the SEAs to use in such transition years.

The provision in these proposed regulations listing other applicable regulations, § 212.5, does not include the usual reference to 34 CFR Part 78 (hearing procedures of the Education Appeal Board), because the Education Appeal Board will be superseded, with respect to filing new appeals, by the time the Even Start program is operating. In Pub. L. 100-297, Congress amended Part E of the General Education Provisions Act (GEPA), effective October 25, 1988, requiring the Secretary to establish an Office of Administrative Law Judges to replace the Education Appeal Board, and establishing new hearing procedures. 20 U.S.C. 1234-1234i. The Department plans to publish regulations implementing the amended Part E of GEPA as soon as possible, and those regulations, when final, will apply to the Even Start program, Section 212.5 of these regulations will then be amended to include a reference to the revised regulations under Part E.

B. Reservations of Funds

Set-aside of funds for migrant projects. The statute requires the Secretary to reserve 3 percent of the appropriated funds for use by the Office of Migrant Education to conduct programs consistent with Part B (the Even Start program). 20 U.S.C. 2743(a). The Department interprets this provision as applying to the program regardless of whether the Even Start appropriations equal or exceed $50 million. Regulations to govern the migrant set-aside will be issued separately.

Set-aside of funds for evaluation. The statute requires the Secretary to conduct an annula independent evaluation of Even Start programs and submit a report to Congress summarizing those evaluations. 20 U.S.C. 2748. To conduct these evaluations, the Secretary intends to reserve annually not more than two percent of appropriated funds. This reservation will apply both when the Secretary makes direct grants and when formula grants are made to the States. The reserved amount would be used to evaluate the migrant education programs as well as the basic statutory programs.

C. Significant Provisions

Eligible participants. The Even Start legislation states that, to be eligible to participate in the Even Start program, a child must reside in "a school attendance area" designated for participation in the Chapter 1 basic program. 20 U.S.C. 2745. This could be interpreted to include children who reside in nonparticipating and/or ineligible elementary schools attendance areas, but reside in participating secondary school attendance areas. The Even Start program is designed to provide early intervention for children who will enter Chapter 1 schools, to increase their potential for success as learners. The proposed regulations thus provide that an eligible child must reside in a designated "elementary school attendance area."

Section 1055(1) of the Act defines eligible parents as those eligible for participation in an adult basic education program under the Adult Education Act. Section 312 of the Adult Education Act contains the definition of an adult

eligible for participation in an adult education program. That definition is as follows:

(1) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except, that for the purpose of section 313(b), the term "adult" means an individual 16 years of age or older.

(2) The term "adult education" means services or instruction below the college level for adults—

(A) Who are not enrolled in secondary school;

(B) Who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not acheived an equivalent level of education;

(C) Who are not currently required to be enrolled in school; and

(D) Whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, and thus are in need of programs to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others.

Continuation awards. The proposed regulations contain provisions concerning continuation awards for multi-year projects for fiscal years in which the granting agency changes between the Federal and State agencies. These provisions are designed to provide maximum flexibility to States when they operate the program, while maintaining continuity of local projects during the transition.

The regulations also contain a provision designed to enhance the accountability provisions of the statute and to encourage program improvement. The statute provides that, in making continuation awards, the Secretary or SEA reviews the progress being made by the grantee and may refuse to make an award if the grantee has not made sufficient progress towards meeting the objectives of the project. The regulations include a provision stating that, in lieu of discontinuing funding in that circumstance, the Secretary or SEA may approve revisions to the project, proposed by the grantee, if the revisions would enable the grantee to meet its project objectives.

In addition to provisions applying to both the Federal and State agencies, the regulations contain specific measures for the Secretary to follow in a fiscal year in which the appropriation is insufficient to fund fully all continuation awards. Specifically, the proposed regulations would require the Department first to reduce *pro rata* all continuation awards to not less than 75 percent of their approved amounts. If funds are insufficient to fund all projects at the 75 percent level, the Department would than evaluate the projects, applying the criteria in § 212.21, and fund projects at the 75 percent level in order of their scores until funds are exhausted. In applying the selection criteria, the Department would take into account information collected by the Department throughout the period of the project, including yearly progress reports, the application submitted in the first year, and revisions to that application.

The Departent believes that reducing projects below 75 percent of their approved budgets would seriously impair them and make it difficult for grantees to carry out the required program elements. The procedure proposed in these regulations would set a floor below which no further reductions in budgets would be made. Therefore, in the event that funds are insufficient to support all grantees, those most worthy of continuation will be supported. States are free to adopt these procedures or to establish their own methods when they become granting agencies.

Selection criteria. The proposed regulations assign various weights to the statutory criteria to be used by the Secretary in selecting grantees, and add specific sub-elements to several of the criteria. The allocation of points among these criteria gives an advantage to those applications describing projects that are most likely to be successful in meeting the goals of the Even Start program (§ 212.21(a)—40 points), and that demonstrate the greatest degree of cooperation and coordination among relevant service providers (§ 212.21(c)—30 points.

One of the statutory selection criteria requires the Secretary to judge which proposed projects will serve the greatest percentage of eligible children and parents. This criterion is assigned 5 points. This relatively low total arises from a concern that the criterion, if heavily weighted, would provide an incentive to applicants to proposed large service projects. This could result in funding a small number of grantees, limiting the number of models to demonstrate the effectiveness of the Even Start concept, and restricting the ability of the Department to comply with the requirement of equitable geographic distribution in section 1057(c) of the Act.

In calculating the percentage, the regulations stiplate that only the number of eligible parents and children currently unserved by other similar family-centered projects be used as the basis of the calculation. Thus, an applicant will not be penalized if it or another entity is already providing Even Start-type services. This interpretation is in accordance with the intent of Congress that applicants build on and coordinate with existing programs.

In determining which children or parents are currently served by similar projects, LEAs should include only parents and children who are in projects that follow the Even Start approach. Thus, children enrolled in Head Start programs, or parents enrolled in adult basic education programs, who are not involved in the family-centered approach contained in Even Start, should be considered unserved. In determining which children and parents among those eligible will be served by the project, as opposed to those counted for this selection criterion, applicants must document that they have met the requirements of section 1056(c)(5) (A) and (B) of the Act. These provisions require that applicants provide services to those most in need and to special populations.

The proposed regulations also specify the method by which the Secretary will implement the statutory directive of ensuring an equitable geographic distribution of funds to LEAs and ensuring both urban and rural representation among grantees.

D. Contents of Application

An application to the Secretary under section 1052(a) of the Act for a new project grant must include the following:

(a) A description of the following project elements required by section 1054(b) of the Act:

(1) The identification and recruitment of eligible children.

(2) Screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services.

(3) Design of projects and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

(i) Scheduling and location of services to allow joint participation by parents and children;

(ii) Child care for the period that parents are involved in the project; and

(iii) Transportation for the purpose of enabling parents and their children to participate in the project.

(4) The establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs.

(5) Provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the project (including child care staff in programs enrolling children of participants on a space available basis).

(6) Provision of and monitoring of integrated instructional services to participating parents and children through home-based programs.

(7) Coordination of the project with other programs funded under Chapter 1 and any relevant programs under Chapter 2 of Title I of the Act, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs and other relevant programs.

(b) Documentation, as required by section 1056(b) of the Act, that the applicant has the qualified personnel required—

(1) To develop, administer, and implement an Even Start project; and

(2) To provide special training necessary to prepare staff for the project.

(c) A plan of operation for the project, as required by section 1056(c) of the Act, which includes—

(1) A description of the project goals;

(2) A description of the activities and services that will be provided under the project (including training and preparation of staff);

(3) A description of the population to be served and an estimate of the number of participants;

(4) If appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the project;

(5) A statement of the methods that will be used—

(i) To ensure that the project will serve those eligible participants most in need of the project's activities and services;

(ii) To provide services to special populations, such as individuals with limited English proficiency and individuals with handicaps; and

(iii) To encourage participants to remain in the project for a time sufficient to meet project goals; and

(6) A description of the methods by which the applicant will coordinate the project with programs under Chapter 1 and Chapter 2, where appropriate, of Title I of the Act, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs, and other relevant programs.

(d) Information sufficient to demonstrate that the applicant will be able to provide additional funds required by section 1054(c) of the Act for the duration of the project

(e) A certification that the application has held an open meeting regarding the application, as required by § 212.11.

(f) Additional requirements, consistent with the statute and these regulations, which the Secretary may include in the annual application package.

Executive Order 12291

These proposed 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.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Even Start program has the potential of providing significant advantages to the family. In funding family-centered education projects, the program may help the family perform its educational function, strengthen the stability of the family, and strengthen the role of parents in the education of their children.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 212.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: James D. Houser.

Intergovernmental Review

When this program is administered by the Secretary as a direct grant program, it is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order 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.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in views concerning the allocation of points among selection criteria and their sub-elements, and on the transition provisions for continuation awards.

All comments submitted in response to these proposed regulations will be available for pubic inspection, during and after the comment period, in Room 2043, 400 Maryland Avenue 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.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 212

Adult education, Education, Education of disadvantaged, Elementary and secondary education, Family, Family-centered education, Grant programs education, Infants and children, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.212, the Even Start program.)

Dated: October 20, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 212 to read as follows:

PART 212—EVEN START

Subpart A—General

Sec.

212.1 What is the Even Start program?
212.2 Who is eligible for a grant?
212.3 What activities may the Secretary or States fund?
212.4 What is the duration of a grant to an LEA?
212.5 What regulations apply?
212.6 What definitions apply?

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

212.10 To whom does an LEA submit an application?
212.11 What requirements apply for submitting an application to the Secretary for a new grant?

Subpart C—How Does the Secretary Make a Grant?

New Grants

212.20 How does the Secretary evaluate an application for a new grant?
212.21 What selection criteria does the Secretary use in making new grants?
212.22 What additional factors does the Secretary consider in making new grants?
212.23 [Reserved]
212.24 [Reserved]

Continuation Awards

212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?
212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meeting its project objectives?

Subpart D—[Reserved]

Subpart E—Transition Provisions

212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

Authority: 20 U.S.C. 2741–2749, unless otherwise noted.

Subpart A—General

§ 212.1 What is the Even Start program?

The Even Start program grants funds to eligible local educational agencies (LEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

(Authority: 20 U.S.C. 2744(a))

§ 212.2 Who is eligible for a grant?

(a) An applicant is eligible to receive assistance under the Even Start program if it is—

(1) An LEA that has within its geographic jurisdiction eligible participants, as defined in paragraph (b) of this section; or

(2) A consortium of LEAs, each of which has within its geographic jurisdiction eligible participants.

(b) An eligible participant is—

(1) A parent of a child described in paragraph (b)(2) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2);

(2) A child, aged 1 to 7, inclusive, of any eligible parent, who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act.

(Authority: 20 U.S.C. 2742(a), 2745)

§ 212.3 What activities may the Secretary or States fund?

The Secretary of each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2744)

§ 212.4 What is the duration of a grant to an LEA?

No grant to an LEA may exceed four years in duration.

(Authority: 20 U.S.C. 2747(d))

§ 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) If the Secretary makes direct grants to LEAs under section 1052(a) of the Act, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(b) If the Secretary makes grants to States under section 1052(b) of the Act, the EDGAR in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(c) The regulations in this Part 212.

(Authority: 20 U.S.C. 2831(a))

§ 212.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Elementary school
Equipment
Local educational agency
Parent
Secretary
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in:

(1) 34 CFR 77.1

Applicant
Application
Award
Department
Facilities
Fiscal year
Grant period
Project

(2) 34 CFR 80.3

Grant
Grantee

(c) *Other definitions.* The following definitions also apply to this part: "Act" means the Elementary and Secondary Education Act of 1965, as amended. "State" means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2742(c), 2831(a))

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

§ 212.10 To whom does an LEA submit an application?

An applicant must submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the State, as the case may be.

(Authority: 20 U.S.C. 2746(a))

§ 212.11 What requirements apply for submitting an application to the Secretary for a new grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an applicant shall—

(a) Give reasonable notice of the general public's opportunity to testify or

otherwise comment at an open meeting regarding the subject matter of the application;

{(b) Hold the open meeting; and

(c) Consider comments obtained at the meeting in developing the final application.

(Authority: 20 U.S.C. 3386)

Subpart C—How Does the Secretary Make a Grant?

New Grants

§ 212.20 How does the Secretary evaluate an application for a new grant?

(a) *Review panel.*

(1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2) In order for the applicant to be considered for a new grant, a majority of the panel members must agree, in accordance with section 1057(a)(5) of the Act, that the applicant has adequately demonstrated its ability to provide the additional funding required by section 1054(c) of the Act.

(3)(i) The panel evaluates an application for a new grant on the basis of the criteria in § 212.21.

(ii) The panel gives up to 100 points for these criteria.

(iii) The maximum possible score for each complete criterion in § 212.21 is indicated in parentheses.

(b) *Additional factors.* The Secretary then applies the additional consideration in § 212.22 to make grants.

(Authority: 20 U.S.C. 2747)

§ 212.21 What selection criteria does the Secretary use in making new grants?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Likelihood of success in meeting the Even Start goals* (40 total points). The Secretary reviews each application to determine the extent to which the project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion the Secretary determines the extent to which the project described in the application—

(1) Contains clear, attainable, measureable objectives against which the progress and success of the project will be measured (8 points);

(2) Includes appropriate activities, services, and timelines to achieve those objectives (7 points);

(3) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (5 points);

(4) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(5) Is based on sound research in the areas of early childhood education, adult literacy, and parenting education (5 points);

(6) Contains instructional and developmental activities appropriate to the level of the children to be served (5 points); and

(7) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months (5 points).

(b) Percentage of eligible children and parents to be served (5 points).

The Secretary reviews each application to determine the total percentage of eligible children and parents that will be served under this project. This percentage is determined by dividing the number of parents and children to be served by this project by the total number of eligible parents and children who are not receiving similar family-centered services.

The Secretary gives points on the basis of that percentage, as follows:

Over 50%—5 points
40–49%—4 points
30–39%—3 points
20–29%—2 points
1–19%—1 point

(c) *Degree of cooperation and coordination* (30 total points). The Secretary reviews each application to determine the extent to which cooperation and coordination will take place in all phases of the program among a variety of relevant service providers, including those conducting programs listed in section 1054(b)(7) of the Act, 20 U.S.C. 2744(b)(7). The Secretary considers the extent to which—

(1) The applicant has made a survey of all relevant providers and is fully aware of similar and related services currently being provided to eligible children and adults (5 points);

(2) The applicant has, in planning the project, engaged various providers in discussions that have resulted in firm agreements for specific cooperative activities (10 points);

(3) The plan of operation includes specific provision for additional cooperative efforts with other service providers throughout the duration of the project (5 points); and

(4) Services offered by the applicant will build upon, but not duplicate,those currently being provided to project participants by the applicant or other service providers (10 points).

(d) *Reasonableness of budget* (10 points). The Secretary reviews each application to determine the extent to which the budget submitted for the entire cost of the project appears reasonable, given the scope of the project. The Secretary considers the extent to which—

(1) Costs are reasonable in relation to expected outcomes;

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) *Promise as a model* (15 total points).The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing a model that may be transferred to other LEAs. The Secretary considers the extent to which—

(1) Evaluations of the project are likely to yield valid and reliable information concerning the impact of the project on participants, and an applicant's evaluation plan includes, where possible, comparisons with appropriate control groups (6 points);

(2) The general components of the project are readily understandable and transferable, and are based on research or models that have proven to be adaptable to various circumstances (7 points); and

(3) The applicant shows a willingness to serve as model and to disseminate detailed information about the project to the Department and to other LEAs (2 points).

(Authority: 20 U.S.C. 2747, 2831(a))

§ 212.22 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in § 212.21, the Secretary, in approving grants, ensures that—

(1) Each project builds on existing community resources in a cooperative effort to create a new range of services integrating early childhood education and adult education for parents into a unified program; and

(2)(i) Grants are made to LEAs that are representative of urban and rural regions of the United States.

(ii) Grant funds are distributed equitably among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into categories of "urban" and "rural" on the basis of paragraph (c) of this section;

(2) In each category—

(i) Determines the highest scoring application from each State and places these applications in order of their scores; and

(ii) Places all remaining applications in order of their scores; and

(3) Funds equal numbers of projects in each category provided there are sufficient acceptable applications in each category, by—

(i) First funding acceptable applications from paragraph (b)(2)(i) of this section in order of their scores; and

(ii) Then funding acceptable applications under paragraph (b)(2)(ii) of this section in order of their scores.

(c) For the purpose of this section, urban LEAs are those within Standard Metropolitan Statistical Areas (SMSAs), as most recently designated by the United States Department of Commerce, Bureau of the Census, and rural LEAs are those outside the boundaries of SMSAs.

(d) To the extent that acceptable applications are received from the various States, the Secretary does not give grants to LEAs in one State in amounts that, in total, exceed the amount that the State would be allocated under section 1053(b) of the Act if appropriations for the Even Start program equals $50 million.

(Authority: 20 U.S.C. 2741, 2747(a)(6), (c), (d)(2))

§ 212.23 [Reserved]

§ 212.24 [Reserved]

Continuation Awards

§ 212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amounts at which each request would otherwise be funded ("approvable grant" amounts), the Secretary reduces the approvable grant awards for continuation requests on a *pro rata* basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant level, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant levels, the Secretary—

(1) Ranks all continuation requests based on the criteria in § 212.21 taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to the application; and

(2) Funds continuation requests based on that rank ordering, at 75 percent of approvable grant levels until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of § 212.22(a), the Secretary adjusts the selection process so as to meet those requirements.

(Authority: 20 U.S.C. 2831(a))

§ 212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meeting its project objectives?

If the Secretary or an SEA finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary or SEA may—

(a) Approve revisions to the project, proposed by the LEA, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the LEA notice and an opportunity for a hearing, refuse to make a continuation award to the LEA for the project.

(Authority: 20 U.S.C. 2747(d)(1))

Subpart D—[Reserved]

Subpart E—Transition Provisions

§ 212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

If the responsibility for administering the Even Start program transfers from the Department to the SEAs, or *vice versa*—

(a) The Secretary applies—

(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);

(2) § 212.26; and

(3) § 212.25, if necessary.

(b)(1) An SEA shall continue a project grant for the total original period of time for which the grant was made if, for each project—

(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the projects;

(ii) The grantee meets applicable State requirements for continuation awards; and

(iii) Sufficient funds exist for the SEA to continue all project grants.

(2) For the project period, funds unobligated by a grantee in one project year remain with the grantee, and the SEA deducts from the subsequent year's continuation award an amount equal to the unobligated funds;

(3) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants; and

(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2747(d), 2831(a))

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H.R. 5186/Pub. L. 100-508

To designate the Federal building and United States courthouse located at 109 South Highland, Jackson, Tennessee, as the "Ed Jones Federal Building and United States Courthouse." (Oct. 20, 1988; 102 Stat. 2542; 1 page) Price: $1.00

S. 2393/Pub. L. 100-509

Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988. (Oct. 20, 1988; 102 Stat. 2543; 4 pages) Price: $1.00